SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
Docket No. DRB 23-243
District Docket Nos. XIV-2021-0321E
and XIV-2021-0343E

In the Matter of David Richard Cubby, Jr.
An Attorney at Law

Decided
January 24, 2024

Certification of the Record

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Introduction

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

This matter was before us on a certification of the record filed by the Office of Attorney Ethics (the OAE), pursuant to R. 1:20-4(f). The formal ethics complaint charged respondent with having violated RPC 5.5(a)(1) (two instances – practicing law while ineligible and practicing law while suspended), RPC 8.1(b) (three instances – failing to cooperate with disciplinary authorities), and RPC 8.4(d) (two instances – engaging in conduct prejudicial to the administration of justice).[1]

For the reasons set forth below, we determine to recommend to the Court that respondent be disbarred.

Respondent earned admission to the New Jersey bar in 2011 and to the New York bar in 2012. At the relevant times, he maintained a practice of law in Waldwick, New Jersey.

[1] Due to respondent's initial failure to file a conforming answer to the formal ethics complaint, and on notice to respondent, the OAE amended the complaint to include the third RPC 8.1(b) charge.

Effective October 5, 2020, the Court declared respondent ineligible to practice law in New Jersey for his failure to pay the annual assessment to the New Jersey Lawyers' Fund for Client Protection (the CPF).

Effective November 9, 2020, the Court again declared respondent ineligible to practice law for his failure to comply with the mandatory procedures for annual Interest on Lawyers Trust Accounts (IOLTA) registration, pursuant to R. 1:28A-2(d).

Respondent has not cured those CPF or IOLTA deficiencies and remains ineligible, on both bases, to date.

Additionally, effective July 27, 2021, the Court temporarily suspended respondent for his failure to cooperate with the OAE. In re Cubby, 247 N.J. 487 (2021). In its Order, the Court also required that, prior to his reinstatement, respondent demonstrate his fitness to practice law, as attested to by a mental health professional approved by the OAE. Respondent remains temporarily suspended.

On May 3, 2022, the Court censured respondent, in a default matter, for violating RPC 3.2 (failing to treat all persons involved in the legal process with courtesy and consideration); RPC 3.5(c) (engaging in conduct intended to disrupt a tribunal); RPC 8.1(b); RPC 8.2(a) (making a statement with reckless

disregard for the truth or falsity thereof concerning the qualifications of a judge); and RPC 8.4(d). In re Cubby, 250 N.J. 426 (2022) (Cubby I). Respondent's misconduct encompassed two separate matters and stemmed from his inability to comport himself appropriately toward his adversaries; superior court judges; court personnel; and disciplinary authorities.

In the first matter comprising Cubby I, in March 2019, respondent, in his capacity as a pro se defendant in a landlord tenant case, continually interrupted his adversary during mediation and called him a "scumbag." In the Matter of David Richard Cubby, Jr., DRB 20-304 (Aug. 3, 2021) at 15. During mediation, respondent became "loud," "aggressive," and "incensed" towards his adversary and, at one point, approached his adversary in a confrontational matter, requiring the mediator to intervene. Ibid. After mediation failed, respondent, during a court appearance, repeatedly interrupted the judge with insulting remarks; called her "corrupt;" refused to accept the judge's rulings; and left the courtroom after she had directed that the matter proceed to trial. Id. at 24-25.

In April 2019, respondent filed, with the Appellate Division, a successful emergent motion seeking, among other relief, to stay the Superior Court's eviction order. Id. at 18. Despite his success, respondent accused the Appellate Division of "either dropp[ing] the ball or [being] in on the scam" after the

Appellate Division had informed him that it had no jurisdiction to consider his objections to the submissions of his adversary and the trial judge. Id. at 35.

In the second matter comprising Cubby I, respondent represented Paterson Coalition for Housing, Inc. (PCH) in connection with its status as a defendant in a Superior Court of New Jersey, Chancery Division lawsuit filed by Bascom Corporation (Bascom). Id. at 19. On March 27, 2019, respondent appeared before the Superior Court in connection with PCH's motions to set aside a sheriff's sale, vacate a final judgment, and discharge a lis pendens. Ibid. While the judge attempted to render a decision from the bench, respondent called the judge "corrupt;" accused the judge of issuing an "extrajudicial" decision; referred to opposing counsel as "clowns;" and accused the sheriff's officer of threatening him after the officer directed him not to interrupt the court. Id. at 20-22.

During the ensuing ethics proceedings in Cubby I, respondent continued his vitriolic behavior by engaging in unsupported attacks against us; the OAE and its procedures; the witnesses; the District Ethics Committee (the DEC) chair; and the Office of Board Counsel (the OBC) and its procedures. Id. at 3-9. Among other attacks, respondent baselessly accused disciplinary authorities of corruption or incompetence, expressed his belief that the OAE had prosecuted

him in a "sham investigation," the purpose of which "only served to protect parties believed to be actively engaging in misappropriating government funds," and claimed that the OBC had attempted to "have [his] matter rubber stamped for discipline while allowing [the Board] to avoid accountability." Id. at 4, 7-9.

In determining that a censure was the appropriate quantum of discipline, we weighed, in aggravation, the default status of the matter and the fact that respondent's improper behavior had encompassed two separate matters and had continued, unabated, toward the OAE, the OBC, and us. Id. at 35-37. In mitigation, however, we considered respondent's then lack of prior discipline in his relatively short, eight-year career at the bar. Id. at 36. Finally, we required respondent to complete an anger management course within sixty days of the Court's disciplinary Order in that matter. Id. at 37. The Court agreed with our recommended discipline and condition. In addition, the Court required respondent, prior to his reinstatement, to demonstrate his fitness to practice law, as attested to by a mental health professional approved by the OAE. Cubby, 250 N.J. at 427.

Effective May 3, 2022, the Court suspended respondent for three months, in a default matter, in connection with his threatening and insulting conduct toward disciplinary authorities. In re Cubby, 250 N.J. 428 (2022) (Cubby II).

In that matter, in December 2020, an OBC judiciary secretary sent respondent a letter concerning the scheduling of the Cubby I matter. In the Matter of David Richard Cubby, Jr., DRB 21-205 (March 15, 2022) at 7. In reply, respondent "reject[ed] the validity" of the OBC's letter, accused us of "attempting to arbitrarily declare [the record] closed . . . in a deliberate attempt to deny [him] his civil and due process rights," and accused the OAE of "grievous procedural violations and deliberate wrongdoing" based on his belief that Cubby I had proceeded to default "under false pretenses," without a "properly plead complaint," and without any "evidence of an investigation or any type." Ibid.[2] Additionally, respondent accused the OAE and New Jersey prosecutors and judges of "deliberately disregarding the law and maintaining false charges [against him] in retaliation." Id. at 8. Finally, respondent told the OBC secretary that her "actions may have been done in furtherance of a criminal conspiracy" and that, if she did not bring the matter to the attention of her supervisors, then he would "have no choice but to hold [her] personally liable" for "disregard[ing] deliberate illegal acts." Ibid.

[2] Throughout our decision, all typographical errors contained in the quoted correspondence by respondent are contained in his original correspondence.

Between February and April 2021, respondent refused to comply with the disciplinary investigation underlying his conduct toward the OBC secretary. Id. at 9-12. Specifically, respondent repeatedly accused an OAE attorney of official misconduct and threatened to seek a restraining order against that attorney for his role in the investigation. Id. at 14. Moreover, respondent demanded that OAE staff prevent the OAE attorney from discharging his investigative duties and threatened that anyone who assisted the attorney would, likewise, be guilty of misconduct. Ibid. Finally, respondent, without any legal basis, "reject[ed] service" of at least one OAE letter, refused to provide the OAE a written explanation regarding his conduct toward the OBC secretary, and failed to appear for two scheduled demand interviews, despite having received proper notice. Id. at 14-15.

We determined that a three-month suspension was the appropriate quantum of discipline, emphasizing that respondent's misconduct was consistent with his scorched-earth strategy to attempt to undermine the Court's disciplinary process and served no purpose other than to seek to intimidate judiciary staff and disciplinary authorities. Id. at 22-23. We also weighed, in aggravation, the default status of the matter and the fact that respondent's vitriolic behavior had continued, uninterrupted, since his misconduct underlying Cubby I.

Finally, based on his erratic behavior, we required that respondent (1) comply with the Court's July 27, 2021 temporary suspension Order requiring, prior to his reinstatement, that he demonstrate his fitness to practice law, as attested to by a mental health professional approved by the OAE, and (2) complete an anger management course. Id. at 24. The Court agreed with our recommended discipline and conditions. Cubby, 250 N.J. at 428.

We now turn to the allegations of the complaint.

Facts

Practicing Law While Administratively Ineligible

As detailed above, in March 2019, respondent represented PCH in connection with a Chancery Division lawsuit instituted by Bascom. On May 15, 2019, following the Superior Court's March 27, 2019 order denying PCH's motions to side aside a sheriff's sale, vacate a final judgment, and discharge a lis pendens,[3] respondent filed an appeal of the Superior Court's ruling, on behalf of PCH, with the Appellate Division.

[3] The scope of our decision in Cubby I regarding the PCH client matter was confined to respondent's inappropriate behavior during the Superior Court's March 27, 2019 ruling from the bench.

During the pendency of the appeal, and while respondent continued to represent PCH, the Court declared respondent ineligible to practice law in New Jersey on two bases. Specifically, effective October 5, 2020, the Court declared respondent ineligible to practice law for failing to pay the annual assessment to the CPF and, effective November 9, 2020, the Court again declared respondent ineligible for failing to comply with the mandatory procedures for annual IOLTA registration, pursuant to R. 1:28A-2(d). To date, respondent remains ineligible to practice law on both bases.

Notwithstanding his ineligibility, respondent continued to send messages on behalf of PCH to the Appellate Division, via e-Courts Appellate. Specifically, on November 20, 2020, respondent sent the Appellate Division a message identifying himself as counsel for PCH and requesting "an update on the scheduling of oral arguments in this matter."

Also on November 20, 2020, respondent sent the Appellate Division a separate message stating that he "would like to advise the judges of the panel that he has been erroneously suspended from good standing. Employees from both the [CPF] and IOLTA have been advised of their error, but upon information and belief have been avoiding identifying any supervisory figure or licensed attorney that could be held responsible for the error." In his message,

respondent also maintained that "at least one of the administrative offices listed above was pressured by the [OAE] to suspend my license. The [OAE] has been engaged in malicious prosecution in retaliation for my involvement in this case, Bascom Corporation v. Paterson Coalition for Housing."

On November 23, 2020, the Appellate Division replied to respondent's messages advising him that, due to his administrative ineligibility, he would not be able to participate in oral argument.

One month later, on December 30, 2020, respondent sent the Appellate Division another message stating, in part, that:

> It is not my intention to be abrupt with court staff, however, it is my direct allegation that parties in this matter are actively engaged in malicious prosecution, and are unlawfully interfering with my ability to defend my client. The purpose of these communications are to give you and the judges notice of these unlawful acts because I cannot risk you denying that these extreme and unlawful efforts to prejudice my practice and my clients were not brought to the attention of the courts. Copies of these communications are served upon all parties via e-Courts in accordance with Court Rules, and as such all parties are on notice of the allegations they contain.
>
> I do not recognize any suspension of my license to practice; no competent licensed legal professional or officeholder has signed off on my suspension and it is a direct result of administrative incompetence if not outright criminal behavior. Further, as clearly stated in my last correspondence, the staff for those bodies are

> refusing to cooperate with correcting their errors, forcing me to conclude that they have personal knowledge that my suspension was unwarranted and retaliatory and refuse to act in furtherance of those goals.
>
> I demand that this correspondence and the prior correspondence be forwarded to the judges. I must use this method of communication as the unlawful conduct described above has denied me of expedient methods of communicating with the courts, which I submit is by design. I am charging you with personal responsibility for confirming its delivery.
>
> [CEx.5App.24-25.][4]

On March 9, 2021, in light of respondent's ongoing ineligibility to practice law, the Appellate Division issued an order providing that, unless PCH obtained substitute counsel by March 19, 2021, its appeal would be dismissed, with prejudice. On March 19, 2021, respondent sent the Appellate Division calendaring unit an e-mail stating:

> This e-mail shall memorialize the fact that the Appellate Division removed me as attorney of record from e-Courts after writing a false and facetious letter demanding that a substitution of counsel be entered. This is material as the Court falsely claimed that a change of counsel could not be effectuated without a substitution of counsel. I directly allege that the Appellate Division, including specific individuals with

[4] "CREx." refers to the exhibits appended to the certification of the record.
"CEx." refers to the exhibits appended to the formal ethics complaint.
"SubEx." refers to the sub-exhibits of the complaint or the certification of the record.

> obvious conflicts of interest are unlawfully interfering with my client and its representation in this matter.
>
> [CEx.5Ap.9.]

On March 22, 2021, the Appellate Division issued an order expressly recognizing a new attorney unaffiliated with respondent as counsel of record for PCH, following that lawyer's inability to obtain respondent's signature on a substitution of attorney.

Based on respondent's decision to correspond with the Appellate Division concerning PCH's appeal despite his awareness of his ineligible status, the OAE alleged that respondent violated RPC 5.5(a)(1).

Practicing Law While Suspended

Effective July 27, 2021, the Court temporarily suspended respondent for failing to cooperate with the OAE. That same date, the OAE notified the Honorable Bonnie J. Mizdol, A.J.S.C., of respondent's temporary suspension. In turn, Judge Mizdol sent respondent a letter reminding him of his temporary suspension and of his obligation, as a suspended attorney, to comply with R. 1:20-20.

On August 3, 2021, Judge Mizdol sent respondent a second letter again reminding him of his temporary suspension and directing that he comply with R. 1:20-20.

On August 19, 2021, respondent sent Judge Mizdol a reply letter in which he referred to himself as "David R. Cubby, Esq.," on both his letterhead and signature line. Respondent's letter also included the following subject lines:

> RE: Retaliation against David R. Cubby, Esq.
> Docket No.: Various OAE Dockets, Undocketed Criminal Charges, Various Lawsuits filed by the undersigned on behalf of clients.
>
> [CEx.5Bp.7.]

In his letter, respondent demanded "a hearing before Judge Mizdol concerning the false and defamatory filings being railroaded through the Bergen County Court House by [an assistant prosecutor] and Judge Christopher Kazlau, a subordinate judge in your vicinage." Respondent further asserted that:

> I am in possession of evidence and have knowledge of material facts that demonstrate that [the assistant prosecutor] and Kazlau are willing participants in a criminal conspiracy designed to prevent disclosure of criminal violations committed by politicians, real estate developers, judges, prosecutors and attorneys in Passaic and Bergen Counties. This conspiracy involves real estate fraud, tax lien fraud, embezzlement of public funds, and both federal and state grant fraud.

[CEx.5Bp.7.]

In its formal ethics complaint, the OAE alleged that, because respondent's claimed "fraud" and "embezzlement" were the subject of Bascom's lawsuit against PCH, respondent was, in effect, requesting a hearing in connection with PCH's client matter while suspended.

Additionally, in his August 19 letter to Judge Mizdol, respondent launched baseless attacks against the OAE, superior and municipal court judges, and law enforcement entities. Specifically, respondent alleged that government officials had engaged in "clear-cut racketeering activity" in connection with the seizure of his "antique firearms" and the issuance of warrants for his arrest. Respondent also maintained, without evidence, that the OAE was:

> engaged in creating a false narrative of noncompliance against me, and colluded with a retired judge to have my answer to [its] false and defamatory investigations stricken based on [the OAE's] hollow and unsupported representations that I withheld information from my answer. This is entirely false, and it is in fact [the OAE] who withheld legally sufficient facts in filing [its] pleadings and has generated document after document of false evidence against me.
>
> [CEx.5Bp.9.]

Respondent concluded his letter to Judge Mizdol as follows:

> I do not believe I have ever appeared in your courtroom, and if we have met in another professional or private setting I do not remember it. . . . It is, however, my well supported opinion that you are required to conduct a hearing on these allegations in the interest of justice, and in compliance with the Code of Judicial Conduct. This request is written in plain language because it is my intent to publish it in the event you refuse to grant a hearing, and in the face of such a blatant disregard for my rights, I will pursue those rights in the public forum for the purpose of protecting the public against the further machinations of these corrupt officials.
>
> [CEx.5Bp.9.]

The next day, on August 20, 2021, respondent sent Judge Mizdol another letter containing the same subject line and references to himself as "David R. Cubby, Esq." In his letter, respondent maintained that judiciary staff had advised him that Judge Mizdol had left for vacation without having replied to his August 19 letter. Based on these circumstances, respondent expressed his view that "this is simply a repeat of the conduct I have experienced throughout the past five years of attempting to secure impartial hearings for first my clients and then later myself." Respondent alleged that "each and every one of the judges I have accused of misconduct have systematically avoided responding to letters and requests for hearings on complex issues, only to issue orders or deny me an opportunity to speak on the record." Additionally, respondent maintained his

willingness "to provide sworn testimony against these judges concerning what I have certified through pleadings and certifications to be clear cut attempts to prevent me from presenting my case on the record so that false and facetious orders can be granted that deprive me of my rights and create a false narrative that is not based in law or fact." Respondent also declared that:

> You have been directly informed that this is a time sensitive matter, and a mere adjournment to provide yourself with an opportunity to assess the facts is a mere pen stroke away. I also am understanding of the fact that such a order may be in the works, but it is a simple fact that every professional courtesy I have extended to these other judges has been exploited to issue orders based on hollow records that merely seek to punish me for speaking against intense and deliberate corruption of the judicial process. I do not have the luxury of giving you any breathing room, and I remind you of your obligation under [Canon 2, Rule] 2.1 to '[promote] public confidence in the independence, integrity and impartiality of the judiciary,' and to 'avoid impropriety and the appearance of impropriety.'
>
> [CEx.5Bp.11.]

On August 23, 2021, respondent sent Judge Mizdol a third letter in which he again referred to himself as "David R. Cubby, Esq." Respondent's letter also contained the same subject line as his August 19 and 20 letters concerning, among other things, "Various Lawsuits filed by the undersigned on behalf of clients." In his letter, respondent stated that, based on his discussion with Judge

Mizdol's law clerk, he had expected a response to his August 19 and 20 letters "by the end of the day." Respondent concluded by stating that the "courthouse closed approximately twenty minutes ago and I have not yet received a response."

On August 24, 2021, Judge Mizdol sent respondent a reply letter in which she reminded him of his status as a suspended attorney and of his inappropriate use of the title "Esq." to hold himself out as a lawyer in good standing. Judge Mizdol informed respondent that his request for a hearing was "improper and misplaced" and directed him to comply with R. 1:20-20 governing suspended attorneys.

Hours later, on August 24, 2021, respondent sent Judge Mizdol a reply letter containing the same subject line and use of the title "Esq." as his prior correspondence. In his letter, respondent proclaimed that Judge Mizdol's letter lacked "legal analysis or citation to any law or fact that would support it." Respondent further announced that Judge Mizdol's correspondence was "of no concern to me; you have no legal basis for ordering me to comply with false and facetious orders that were forced through sham proceedings with a total disregard for due process." Respondent also declared that "as I have done in the past, it is my legal opinion that your conduct voids any qualified immunity you

may have held due to your office. You are intentionally depriving yourself of an opportunity to create a record of facts and denying a pro se litigant a chance to be heard as directly mandated by the Code of Judicial Conduct." Respondent concluded by expressing his view that Judge Mizdol had engaged in "unconscionable conduct" based on her decision not to conduct a hearing concerning his accusations against public officials.

Based on respondent's decision to correspond with Judge Mizdol while temporarily suspended concerning his requests for a hearing regarding, among other issues, the lawsuits he had filed on behalf his clients, the OAE alleged that respondent violated RPC 5.5(a)(1) by knowingly practicing law while suspended.

Failing to Comply with the Court Order's and to Cooperate with the OAE

In its July 27, 2021 temporary suspension Order, the Court "restrained from disbursement" all funds respondent held in his attorney trust (ATA) and business accounts (ABA) in any New Jersey financial institution. According to respondent's annual attorney registration statement, since March 31, 2015, he had registered his ATA with Lakeland Community Bank (Lakeland Bank) and his ABA with TD Bank.

Between July 27 and August 13, 2021, the OAE sent letters to TD Bank and to Lakeland Bank advising them of the account restrictions imposed by the Court's temporary suspension Order. On August 11, 2021, Lakeland Bank replied to the OAE that respondent did not maintain any attorney accounts at its institution. On August 16, 2021, TD Bank replied to the OAE that respondent's "account" at its institution had been closed on December 27, 2017.[5]

Meanwhile, on August 10, 2021, the OAE sent respondent a letter directing that, by August 13, 2021, he complete an "attorney bank account disclosure form" describing the attorney accounts that he was required to maintain in connection with his practice of law, pursuant to R. 1:21-6(a). Respondent, however, failed to reply. Consequently, on August 17, 2021, the OAE filed a petition with the Court requesting that it issue an Order directing that respondent disclose the financial institutions and account numbers associated with his attorney accounts.

On September 10, 2021, the Court issued an Order granting the OAE's petition and requiring that, by September 20, 2021, respondent provide the OAE with the names of the financial institutions in which he maintained his attorney

[5] The type of account that respondent had maintained at TD Bank is unclear based on the record before us.

accounts along with "all identifying account information." On September 16, 2021, the OAE sent respondent a letter, via certified, regular, and electronic mail, directing that he provide the information required by the Court's Order. Respondent, however, failed to reply to the OAE or to comply with the Court's Order.

On October 15, 2021, the OAE sent respondent another copy of its September 16 letter, via e-mail, directing that he comply with the Court's September 10 Order. Hours later, in a reply e-mail, respondent proclaimed that he had "not been served with any valid order, pleading or filing in this matter" and that he had "no legal, ethical or moral obligation to respond to any of [the OAE's] correspondence which is void for a lack of due process, its lack of legal basis, and the incompetent nature of its contents." Additionally, respondent baselessly accused OAE personnel of "engag[ing] in a criminal racketeering conspiracy designed to impugn my character unethically and illegally for the purposes of securing a monopoly on state and federal funding in Passaic County." Finally, respondent alleged that the OAE had:

> denied me my right of due process in order to file false documents that are not based in law or fact in a bid to silence me regarding their criminal acts and the criminal acts of judges, prosecutors and politicians operating the Passaic Vicinage as a clearinghouse for their racketeering activities.

[CEx.9.]

Later on, October 15, 2021, the OAE sent respondent a reply e-mail, again directing that he comply with the Court's September 10 Order by disclosing the names of the financial institutions in which he maintained his attorney accounts and the identifying information for those accounts. Minutes later, respondent replied to the OAE as follows:

> There is no error on my part, I have not been served with any valid order.
>
> I have related allegations of a criminal nature to you. It is your responsibility to conduct an appropriate investigation. Of course, you can choose to ignore what I have willfully and knowingly placed in writing to further [the OAE's] criminal acts, but this would be ill-advised.
>
> [CEx.9.]

Following respondent's October 15 messages to the OAE, he failed to attempt to comply with the Court's September 10 Order.

Based on respondent's failure to comply with the OAE's requests for information regarding his financial accounts and his refusal to comply with the Court's September 10 Order, the OAE alleged that respondent violated RPC 8.1(b) and RPC 8.4(d).

Failing to Comply with R. 1:20-20

The Court's July 27, 2021 temporary suspension Order directed respondent to comply with R. 1:20-20, which requires, among other obligations, that he, "within 30 days after the date of the order of suspension (regardless of the effective date thereof) file with the Director the original of a detailed affidavit specifying by correlatively numbered paragraphs how the disciplined attorney has complied with each of the provisions of this [R]ule and the Supreme Court's order." Respondent, however, altogether failed to file the required affidavit of compliance.

On November 3, 2021, the OAE sent respondent a letter, by certified and regular mail, to his home and office addresses of record, reminding him of his obligation to file the affidavit, pursuant to R. 1:20-20, and directing that he submit a written reply to the OAE by November 18, 2021. On November 12, 2021, the certified mail sent to respondent's South Dakota home address was delivered successfully, and the regular mail was not returned. Respondent, however, failed to reply.

On December 13, 2021, the OAE sent respondent an additional letter, by certified and regular mail, to his South Dakota address of record, and by electronic mail, to his e-mail address of record, advising him that his failure to

file a conforming affidavit by December 27, 2021 may result in the OAE's filing of a formal ethics complaint and, further, may preclude consideration of any reinstatement petition for up to six months. On December 20, 2021, the certified mail was delivered successfully, and the regular mail was not returned to the OAE.

Meanwhile, on December 17, 2021, respondent sent the OAE a reply letter announcing that he was "in possession of no valid order suspending me from practice." Respondent further alleged that "[a]ny purported order served by the OAE or any of its associates is the product of fraud upon the Court, the State of New Jersey, and represents criminal retaliation against my person. I have no obligation to comply with any order that was blatantly and criminally entered without due process and with blatant retaliatory intent." Respondent also baselessly accused the OAE of engaging in "political retaliation" against him and proclaimed that the OAE's "recent demand and all subsequent demands, along with those of your co-conspirators, will be ignored as legally void. Your recent letter is evidence of further harassment on your part and failure to execute your duties as a state employee." Respondent further accused an OAE attorney of engaging in "criminal conduct" and "demanded" a "hearing before the entirety of the New Jersey Supreme Court . . . due to [the OAE's] reckless,

immoral, and illegal conduct." Finally, respondent threatened that "[c]ontinuing to avoid prosecution of these corrupt, or, in the alternative, incompetent acts may result in criminal and civil actions."

Respondent's December 17, 2021 letter failed to contain the required R. 1:20-20 affidavit of compliance. Indeed, as of August 16, 2023, the date of the formal ethics complaint, respondent had failed to file the affidavit. Consequently, the OAE charged respondent with having violated RPC 8.1(b) and RPC 8.4(d) for his willful violation of the Court's July 2021 suspension Order by failing to file the affidavit, an action required of all suspended attorneys.

Disciplinary Proceedings Before the DEC

On August 23, 2022, the OAE sent a copy of the formal ethics complaint, by certified and regular mail, to respondent's home addresses of record, and by electronic mail, to his e-mail address of record. On August 29, 2022, the certified mail was delivered successfully to respondent's New Jersey home address of record. Respondent, however, failed to file a verified answer to the complaint within twenty-one days, as R. 1:20-4(e) requires.

On September 21, 2022, the OAE sent a second letter to respondent's home and e-mail addresses of record informing him that, unless he filed a verified answer to the complaint within five days of the date of the letter, the allegations of the complaint would be deemed admitted and the record would be certified to us for the imposition of discipline. Additionally, the OAE advised respondent that its letter "serve[d] as an amendment to the complaint" to charge "a willful violation of RPC 8.1(b)" for his "failure to answer."

On September 23, 2022, respondent sent the OAE an e-mail enclosing what he captioned as a "Motion to Dismiss/Answer." In his e-mail, respondent demanded that his correspondence be delivered to the Chief Justice of the Court, maintained that the OAE repeatedly had "attempted to play tricks with service," and referred to himself as "David R. Cubby ESQUIRE." In his "Motion to Dismiss/Answer," respondent failed to address the allegations raised against him in the formal ethics complaint, as R. 1:20-4(e) requires, and, instead, launched baseless attacks against disciplinary authorities, superior and municipal court judges, and law enforcement agencies. Among other allegations, respondent maintained, without evidence, that such judges had "colluded with opposing counsel to create scheduling conflicts" and to "have me falsely evicted from my apartment." Significantly, respondent proclaimed

that "all orders concerning discipline and attached to the complaint are void by law" based on his view that they were "produced" by disciplinary authorities without having been "validly executed by the New Jersey Supreme Court." Finally, in his letter, respondent falsely referred to himself as "DAVID R. CUBBY, ESQ., Licensed Attorney in the State of New Jersey."

On October 7, 2022, the OAE sent respondent a letter advising him that his answer failed to "address the substance" of the complaint nor contained a "full, candid, and complete disclosure of all facts reasonably within the scope of the" complaint, as R. 1:20-4(e) and the principles of In re Gavel, 22 N.J. 248 (1956) require. The OAE further informed respondent that, should he fail to file a verified conforming answer within five days, the OAE would move to have his answer stricken and to have the matter certified to us for the imposition of discipline, pursuant to R. 1:20-4(f) and the procedures set forth in In the Matters of Peter Jonathan Cresci, DRB 18-124 and 18-196 (Dec. 12, 2018). Finally, the OAE cautioned respondent that his references to himself as a licensed New Jersey attorney were improper, given his ongoing temporary suspension and his three-month disciplinary suspension underlying Cubby II.

Two weeks later, on October 24, 2022, respondent sent the OAE a letter in which he again improperly proclaimed himself to be a "licensed attorney in

the State of New Jersey." In his letter, respondent stated that the OAE was "already in receipt" of his answer and demanded that the OAE provide discovery including a list of the OAE and OBC employees who had performed work on his disciplinary matters and the curriculum vitae for various OAE and judiciary employees.

On April 4, 2023, the DEC secretary assigned a hearing panel to preside over respondent's disciplinary matter. Thereafter, on May 22, 2023, the OAE sent the Panel Chair a letter, copying respondent, requesting that the Chair schedule a pre-hearing conference.

Approximately two months later, on July 12, 2023, the OAE filed its pre-hearing report with the Panel Chair, as R. 1:20-5(b)(2) requires. In its report, the OAE argued that respondent's September 23, 2022 answer failed to comply with the requirements of R. 1:20-4(e) and the principles of Gavel because it did not address the substance of the formal ethics complaint; rather, the OAE argued that it contained "meritless, conspiratorial assertions unsupported by facts or law." The OAE stated that, if respondent refused to file a verified conforming answer, the OAE would file a motion to have his answer stricken and to have the matter certified to us for the imposition of discipline.

Also on July 12, 2023, in reply the OAE's pre-hearing report, respondent sent the OAE an e-mail claiming that he had "no notice of any proceedings" or "scheduled hearings in this matter." Respondent also claimed that the OAE was "engaging in further misconduct" for its "unlawful prosecution of respondent."

Three days later, on July 15, 2023, respondent sent the OAE another letter reiterating his "demand" for "discovery without further delay." Respondent also accused the OAE of "knowingly misrepresent[ing] case law," engaging in "malicious prosecution," and ignoring "widespread judicial corruption." Additionally, respondent announced that he would "continue to hold all orders issued by the OAE, the [Board], and the New Jersey Supreme Court Clerk as void, and shall continue to practice law to the best of his ability in spite of [the OAE's] unlawful attempts to interfere with respondent's and his clients' rights."

On July 19, 2023, the OAE sent respondent a reply letter, again reminding him of his obligation to file a conforming answer that addressed the contents of the formal ethics complaint. The OAE also informed respondent that, pursuant to R. 1:20-5(a)(1), in disciplinary matters, "[d]iscovery shall also be available to the respondent, provided that a verified answer in compliance with R. 1:20-4(e) has been filed." Thus, the OAE stated that, until respondent filed a verified

conforming answer, it would not provide discovery unless directed to do so by the Panel Chair.

Hours later, on July 19, 2023, respondent sent the Panel Chair a letter demanding that he dismiss the complaint and refer various OAE personnel to "proper law enforcement agencies for . . . investigation and eventual prosecution." Respondent further alleged, without evidence, that the OAE "never conducted a neutral investigation, and unlawfully and unethically sought to persecute me out of political retaliation." Additionally, respondent stated that, "whether my answer gets struck is irrelevant . . . . I am entitled to discovery pre-hearing, and since [the OAE] cannot have my answer struck without the hearing, I am entitled to it no matter what false argument the trier of fact might accept." Finally, respondent claimed that the:

> entire record . . . had been irretrievably corrupted by [the OAE's] incompetence [a]nd/or illegal conduct. More damning is the fact that the disciplinary orders issued by the Supreme Court Clerk's Office do not bear as much as a name of a judge authorized to approve them, and it is highly unlikely that any competent or honest judge would sign off on a disciplinary order that was not supported by transcripts or evidence.
>
> [CREx.A, SubEx.15.]

On July 25, 2023, the Panel Chair sent respondent a reply letter, via regular mail, directing him to submit a verified conforming answer by August 10, 2023. The Panel Chair advised respondent that his failure to file a conforming answer placed him "in jeopardy of default."

The next day, on July 26, 2023, respondent sent the Panel Chair an e-mail requesting that he reply to his July 19 correspondence concerning his allegations against the OAE. Minutes later, the Panel Chair replied to respondent advising him of his July 25 letter directing that he file a conforming answer by August 10. The Panel Chair informed respondent that no ethics hearing would be scheduled until he submitted a conforming answer. Shortly thereafter, respondent replied to the Panel Chair accusing him of "cover[ing] up public theft in collusion with [the OAE]" and demanding that he explain why he had elected to submit his July 25 letter "by the slowest possible means."

Between July 27 and 31, 2023, the Panel Chair sent respondent six e-mails requiring that he file a verified conforming answer by August 10, 2023. Additionally, on July 28, 2023, the OAE sent respondent an e-mail advising him that, should he fail to file a conforming answer, the OAE would move to strike his answer and request that the Panel Chair certify the record in this matter to us for the imposition of discipline.

In reply to the Panel Chair's e-mails, on July 28 and 31, 2018, respondent accused the Panel Chair of "aiding and abetting public corruption;" "knowingly violating Court Rules to avoid hearings in this matter;" engaging in "ex parte communications with [the OAE];" "ignoring my pre-answer motion to dismiss;" and "refusing to address your arbitrary and capricious statement that my answer is nonconforming." Respondent's unsupported attacks against the Panel Chair continued as follows:

> You are accused of criminal conduct and attempting to cover up the same. It was demanded that you recuse yourself from this matter and you are refusing to do so because referral of this matter to a trier of fact outside of your law firm will likely trigger an investigation of your illegal conduct. You have no immunity in situations where you have been directly informed of the law and refuse to comply with it.
>
> You are obligated under Court Rule to provide support for your findings. Stop stalling and produce it.
>
> [CREx.A, SubEx.18.]

Meanwhile, on July 28, 2023, respondent sent an e-mail to the employees of the Panel Chair's law firm stating that the Panel Chair had "recklessly endangered your professional reputations" by "engag[ing] in ex parte communications [with the OAE] in a disingenuous attempt to circumvent New Jersey State Law and the Rules of Court in order to avoid holding mandatory

hearings." Respondent also told the employees of the Panel Chair's firm that they had been "placed on direct notice that the acts of [the Panel Chair] and [the OAE] constitute[d] serious crimes, and there are hundreds of pages of evidence confirming the same." Respondent further proclaimed that the Panel Chair's firm was "already liable to me for damages for these unlawful and defamatory actions, and I am willing to settle those matters amicably without further damages to the reputation of your firm." Finally, respondent stated that he had "no recourse other than to publicly expose your firm's involvement in these schemes to protect not only my financial interests but to protect my life from the sort of criminals who would engage in such behavior."

On August 1, 2023, respondent sent letters to the Honorable Robert T. Lougy, A.J.S.C., and the Honorable Michael Shipp, U.S.D.J., in which he referred to himself as "David R. Cubby, Esq." on his letterhead and signature lines.

In his letter to Judge Shipp, respondent "demand[ed]" "a case management conference" concerning the matter of "In Re David R. Cubby, Esq. Attorney at Law." Additionally, respondent attacked the Panel Chair and the OAE for "ignoring [his] prehearing motion to dismiss" and for "manipulat[ing] the law and defraud[ing] the court" by "agree[ing] to lie to cover each other"

and to "engineer the dismissal of [his] answer without a hearing." Respondent claimed that the circumstances underlying his prosecution were "an egregious violation of due process requiring the intervention of the U.S. District Court."

In his letter to Judge Lougy, respondent "request[ed] an opportunity to go on the record" before the Superior Court based on his view that he was the "target of a retaliatory racketeering scheme centered around false, defamatory, and meritless ethics complaints being maliciously prosecuted by the [OAE]." Respondent maintained that, based on his telephone conversation with Judge Lougy's law clerk, it was his "impression that you have instructed her to give evasive and dilatory responses to my request . . . [to] go on the record concerning this matter." Respondent claimed that Judge Lougy was:

> attempting to avoid this issue through inappropriate abuses of the doctrine of legal formalism and a biased and self-serving application of Court Rules. My conversation with your clerk shall be uploaded to the video sharing site YouTube, as even if this is not your intent, it is in the public's interest to understand and evaluate whether such road blocks should be placed before individuals willing to give sworn testimony regarding extreme public corruption.
>
> [CREx.A, SubEx.20.]

On August 2, 2023, Judge Lougy sent respondent a reply letter stating that his correspondence contained "baseless aspersions, inaccurate and derogatory

assumptions, and tone disrespectful of the Court and chambers staff." Judge Lougy reminded respondent that he had no matter pending before his court and had "not, in any way, pursued a legally cognizable action in Mercer Vicinage." Similarly, Judge Lougy advised respondent that "[n]othing in the Rules compels this Court to grant the demands of any citizen who wishes to "'go on the record' and air their various grievances or allegations absent a pending legal matter." Finally, Judge Lougy cautioned respondent that abusive conduct toward judiciary staff would not be tolerated.

On August 11, 2023, respondent sent the Panel Chair an e-mail and a letter containing (1) his September 23, 2022 "Motion to Dismiss/Answer" underlying the instant matter, (2) his deficient March 2020 answer to the formal ethics complaint underlying Cubby I, and (3) his July 15, 2023 letter to the OAE reiterating his "demand" for discovery. In his August 11 letter and e-mail, respondent "demand[ed]" that the Panel Chair "immediately schedule a case management conference or otherwise resign from this matter under conflict of interest." Respondent also "directly accused" the Panel Chair "of colluding" with the OAE and the Panel Chair who had presided over the Cubby I matter "to strike my answer without a hearing in violation of Court Rules, state law, and in furtherance of an unlawful racketeering scheme."

Later on August 11, 2023, respondent sent the OAE presenter an e-mail demanding that he "provide records of all time spent away from your desk." Hours later, on August 11, respondent sent the OAE, the Court Clerk's Office, and various law enforcement agencies a separate e-mail advising them "of possible cyber-crimes committed in the conduct of this matter by the [OAE] and/or [the Panel Chair's law firm]." Specifically, respondent claimed that, earlier on August 11, he had contacted Judge Shipp's chambers and various information technology employees of the United States District Court for the District of New Jersey (the DNJ) and was advised that his prior correspondence directed to Judge Shipp had not been received. Respondent alleged that "[u]pon information and belief, someone from the OAE, [the Panel Chair's law firm], or an associate of theirs within [the DNJ] placed a filter or block on this e-mail address unlawfully. This is an unlawful tampering with government communications and likely a felony. I demand an immediate investigation into this matter."

On August 30, 2023, the OAE filed a motion with the Panel Chair to strike respondent's September 23, 2022 answer as noncompliant with R. 1:20-4(e) and the principles of Gavel, 22 N.J. 248, and Brown, 231 N.J. 166. The OAE also

requested that the Panel Chair certify the record in this matter to us as a default, pursuant to R. 1:20-4(f)(2).

In its motion, the OAE argued that respondent's September 23, 2022 answer failed to address the substance of the complaint, as R. 1:20-4(e) requires, and, instead, "contain[ed] conspiracy theories unsupported and unrelated to the substance of the disciplinary complaint." The OAE also asserted that respondent "was not . . . unaware of the basic form for an answer," given his prior "contact[s] with the disciplinary system" in which he "previously filed a nonconforming answer." In the OAE's view, "[a]ny benefit of the doubt potentially afforded to another respondent" was "simply not available here."

On September 11, 2023, respondent filed with the Panel Chair his opposition to the OAE's motion. In his opposition, the contents of which he certified to be true, respondent "directly and unequivocally accuse[d] [the OAE] and [the Panel Chair] of violations of state and federal law in order to have [r]espondent's answer struck for the purpose of preventing [r]espondent from creating a record of testimony concerning public fraud and unlawful judicial conduct." Respondent further maintained that the OAE's motion was a "disingenuous attempt[] to raise procedural red herrings and meritless technical arguments because," in his view, the charges against him had "no chance of . . .

succeeding on the merits." Respondent also accused the OAE of making "numerous fraudulent representations to obtain void, effectless documents that [the OAE has] falsely represented as 'orders.'" Additionally, respondent alleged that:

> while the majority of [the OAE's] meritless arguments focus on the requirements of R. 1:20-4(e), the [OAE] does not cite that Rule in [its] motion to strike. This is an unethical tactic on the part of [the OAE], [which] wants the matter to be entered as a default so that [r]espondent's statements and pleadings are then barred from the official record and escape judicial review. Of course there is no legal reason to do this and renders all resultant decisions as void; [the OAE] is simply attempting to bury evidence of [its] misconduct in a pile of lies about [r]espondent and [its] false representations of law and fact.
>
> [CREx.Bp.4.]

Respondent also alleged that the OAE had mispresented the principles set forth in Gavel, Brown, and Cresci, noting that he "object[ed] to the use of [Board] decisions as controlling law." Moreover, respondent alleged that his September 23, 2022 answer complied with the requirements of R. 1:20-4(e) based on the fact that he had "certified under penalty of perjury that all of the allegations of the [c]omplaint are false, aside from the trivial recitation of dates and the existence of certain correspondence, none of which are material to [the

OAE's] false allegations." Respondent alleged that his answer further detailed how the OAE "had falsely and fraudulently misrepresented the law to obtain a void order declaring [r]respondent to have acted unethically." In respondent's view, his answer also "identif[ied] specific misconduct conducted by specific officials with the OAE, the [Board,] and the New Jersey Supreme Court Clerk's Office."

Additionally, respondent argued that "the disciplinary proceedings" underlying Cubby I "are void and any orders produced therefrom are illegitimate and have no legal effect." In that vein, respondent expressed his view that he had "no obligation to respond or comply with the illegal orders that [the OAE] have mispresented to be valid and enforceable . . . . They are by law void, and [r]espondent cannot be prosecuted or investigated under them."

On September 22, 2023, four days in advance of the scheduled oral argument on the OAE's motion to strike, the Panel Chair sent respondent and the OAE an e-mail advising them that his mother had passed away and that he would contact them to reschedule oral argument.

On October 3, 2023, the Panel Chair sent respondent and the OAE an e-mail indicating that oral argument on the OAE's motion had been rescheduled for November 8, 2023. Minutes later, respondent sent a reply e-mail stating that

the November 8 date was "unacceptable" and demanding that oral argument be conducted "within the next two weeks." In reply, the Panel Chair reiterated that oral argument on the OAE's motion would remain scheduled for November 8. Respondent, however, "demanded documentation of the date of [the Panel Chair's] mother's death." Respondent maintained that "[i]t is unfortunate that I must do this, but I cannot rule out the possibility that you and [the OAE] are attempting to unlawfully gain an advantage in this matter."

Later on October 3, the Panel Chair sent respondent and the OAE a copy of his mother's obituary. In reply, respondent insisted that the Panel Chair provide "a death certificate or other official record" based on his view that the Panel Chair may have "publish[ed] false notice of his mother's passing." In reply, the Panel Chair again advised respondent that oral argument on the OAE's motion would remain scheduled for November 8, 2023.

On November 8, 2023, following oral argument, the Panel Chair issued an order determining that respondent's September 2022 answer failed to comply with R. 1:20-4(e) and the principles of Gavel, 22 N.J. 248, and Brown, 231 N.J. 166, because it failed to set forth a full, candid, and complete disclosure of all

facts reasonably within the scope of the complaint.[6] Additionally, the Panel Chair's order declared respondent's answer stricken as nonconforming and directed that the matter be certified to us for the imposition of discipline, pursuant to R. 1:20-4(f)(2).

Immediately after the Panel Chair issued his order, respondent posted a publicly accessible review of the Panel Chair's law firm on LinkedIn, a social media website, stating:

> [The Panel Chair's law firm] is a criminal organization. [The law firm] has been repeatedly asked to account for the unlawful and corrupt conduct of its member-partner . . . . [The Panel Chair] is knowingly aiding and abetting racketeers and corrupt politicians in public theft and theft of federal funds. [The Panel Chair] is an incompetent attorney that unlawfully abuses his law license for the benefit of criminal actors.
>
> [CREx.G.]

Additionally, on November 8, 2023, following the issuance of the Panel Chair's order, respondent sent the Panel Chair and the OAE an e-mail proclaiming that the order was "void and has no legal effect."

[6] The record is unclear whether respondent appeared for oral argument before the Panel Chair. However, the Panel Chair's order indicated that he had afforded respondent the "opportunity to be heard."

On November 14, 2023, the OAE certified the record in this matter to us as a default.

The Parties' Correspondence with the OBC

On November 27, 2023, Chief Counsel to the Board sent respondent a letter, by certified and regular mail, to his South Dakota address of record, informing him that this matter was scheduled before us on January 18, 2024, and that any motion to vacate must be filed by December 18, 2023.

On December 4, 2023, respondent sent a reply letter "demand[ing]" that the OBC "withdraw" its scheduling letter "as it contain[ed] false allegations of fact and improperly relie[d] upon legal authority that [did] not actually support the OAE or the [Board's] position." Respondent also "directly alleged in no uncertain terms that this constitutes a knowing misrepresentation of law on the part of [the OBC] and the [Board]."

Additionally, respondent maintained that the instant matter "constitute[d] a continuing tort against [r]espondent" and that he had been the "target of an ongoing racketeering conspiracy." Respondent further argued that a record may only be certified to us for the imposition of discipline if an attorney fails to file an answer to the formal ethics complaint or fails to file an answer containing the

required verification, pursuant to R. 1:20-4(e). Respondent accused the OAE and the Panel Chair of "openly collud[ing] to cancel prehearing conferences and ignor[ing] all Rules of Court in a criminal conspiracy to falsely satisfy this matter as a default." Respondent also alleged that we have "no authority" to recommend the imposition of discipline in this matter "without conducting a de novo hearing." Respondent noted that, should we decline to conduct such a hearing, "any order that results shall be void." Respondent concluded by proclaiming that he had "no obligation to comply with any directive of the OAE, the [Board], or the New Jersey Supreme Court so long as . . . those matters continue to be decided in open and knowing violation of due process."

On December 18, 2023, the OAE filed a letter in opposition to respondent's December 4, 2023 correspondence. In its letter, the OAE argued that respondent's submission failed to satisfy the standard for a motion to vacate the default (MVD). Specifically, the OAE maintained that respondent failed to explain why he had failed to file a conforming answer and emphasized that his September 2022 answer failed to comply with R. 1:20-4(e) and the principles of Gavel, given that it contained "unsupported" "conspiracy theories . . . unrelated to the substance of the [formal ethics] complaint." Moreover, the OAE asserted that respondent's December 2023 submission failed to assert a specific and

meritorious defense to the charges. Indeed, the OAE stressed that none of respondent's correspondence submitted throughout this proceeding even remotely addressed the substance of the allegations against him.

The OAE urged us to recommend to the Court that respondent be disbarred. In support of its argument, the OAE emphasized that the way in which respondent had "conducted himself" before the Panel Chair left "no question that he lacks the very qualities necessary to have the privilege of practicing law in New Jersey." The OAE stated that respondent's "repeated attacks" against the Panel Chair were "reprehensible" and had "no basis in fact or reality." Moreover, the OAE underscored that the "strength of the New Jersey disciplinary system is in its volunteers" and that, although the Panel Chair had "the gumption and fortitude to persist in his service despite the relentless attacks on his character and his firm . . . it cannot be said that other volunteer members would do the same." Accordingly, should respondent's "conduct not be met with the appropriate [sanction]," a "chilling effect" could result "on future volunteerism within the disciplinary system and the judiciary as a whole."

Finally, the OAE emphasized respondent's outward declarations to "hold all [Court] orders as void and [to] continue to practice law to the best of his

ability." Consequently, should respondent ever be restored to practice, the OAE argued that his assault on the Rules of Professional Conduct would continue.

Hours later, in reply to the OAE's letter, respondent sent Chief Counsel to the Board an e-mail, without copying the OAE, in which he "demand[ed]" that we "establish a date for [our] de novo review of this matter without further delay." In reply, Chief Counsel added the OAE to the e-mail thread and advised respondent that he would not engage in any ex parte discussions, reminded him that this matter was pending our review, and informed him that he was prohibited from using an e-mail address that identified himself as an attorney, given his suspended status. In reply, respondent proclaimed:

> I am not suspended from the practice of law; all proceedings, holdings, and orders are void for lack of due process. The previous [Board] decisions which form the underlying basis for the instant matter were secured using the same false and fraudulent manner [the OAE] is attempting here for a second time. As such they are void under state and federal law.
>
> Further, [the OAE presenter] is a criminal knowing[ly] abusing his office to secure additional false, fraudulent and void orders. I will not communicate with him, and the fact the OAE and [the Board] are permitting his involvement in these matters when there is an obvious and total conflict of interest is unconscionable and unlawful. If you have a designee from the OAE whom you would like me to serve, please identify them.

. . .

> I repeat my demand that the [Board] schedule this matter for de novo review. Further red herrings will only be answered with allegations that you yourself are attempting to obfuscate proceedings and leave me in the dark in violation of [C]ourt [R]ules and my civil rights.
>
> [Respondent's December 18, 2023 e-mail to Chief Counsel to the Board.][7]

Analysis and Discipline

Motion to Vacate the Default

As a threshold matter, we determine to treat respondent's December 4, 2023 correspondence demanding that the OBC "withdraw" its scheduling of this matter as an MVD.

To succeed on an MVD where an attorney's answer to the complaint has been stricken for failing to comply with R. 1:20-4(e), an attorney must (1) offer a reasonable explanation for failing to file a conforming answer, and (2) assert a specific and meritorious defense to the underlying charges.

[7] Respondent sent Chief Counsel additional e-mail correspondence and left Chief Counsel multiple voicemail messages. Because the record in this matter is closed, those communications are not summarized here, and were not considered by us.

R. 1:20-4(e) requires an answer to "set forth (1) a full, candid, and complete disclosure of all facts reasonably within the scope of the formal complaint; (2) all affirmative defenses . . . ; (3) any mitigating circumstances; (4) a request for a hearing on the charges or in mitigation; and (5) any constitutional challenges to the proceedings." See also Gavel, 22 N.J. at 263 (holding that attorneys are "obligated to make not merely an answer to the specific allegations of the numbered paragraphs of the complaint but a full, candid and complete disclosure of all facts reasonably within the scope of . . . the charges against [them]"), and In the Matter of Saleemah Malikah Brown, DRB 16-339 (May 31, 2017) at 10 (observing that "an answer that simply denies an allegation is insufficient," given that it does not provide "a full, candid, and complete disclosure of all facts reasonably within the scope of the formal complaint"). Recently, in In the Matter of Nosheen Khawaja, DRB 23-136 (September 22, 2023), we noted that we conduct a de novo review of the sufficiency of an attorney's answer following a special master or hearing panel's decision to suppress the answer as noncompliant with the requirements of Gavel and R. 1:20-4(e).

Here, we conclude that respondent's September 23, 2022 answer clearly failed to set forth a full, candid, and complete disclosure of all facts reasonably

within the scope of the complaint. Rather than substantively address the allegations underlying his unauthorized practice of law before the Appellate Division and Judge Mizdol, his failure to cooperate with the OAE's investigation of his financial accounts, and his refusal to comply with the Court's July 27 and September 10, 2021 Orders, respondent utilized his answer as a means to attack disciplinary authorities, judges, and law enforcement agencies for not capitulating to his demands. Additionally, in his answer, respondent improperly declared himself a "Licensed Attorney in the State of New Jersey," despite his ongoing temporary and disciplinary suspensions, and he falsely proclaimed that "all orders concerning discipline and attached to the complaint" were "void by law."

In his December 4, 2023 letter to the OBC, respondent failed to offer a reasonable explanation for failing to file a conforming answer nor asserted a specific and meritorious defense to the underlying charges, as required to succeed on an MVD. Instead, respondent (1) accused the OBC of misrepresenting legal principles in its scheduling letter; (2) reiterated his view that he has been the "target of an ongoing racketeering conspiracy;" (3) baselessly accused the OAE and the Panel Chair of engaging "in a criminal conspiracy to falsely satisfy this matter as a default;" and (4) openly declared

that he had "no obligation to comply with any directive of the OAE, the [Board], or the New Jersey Supreme Court," based on his unsupported view that any resulting disciplinary Order in this matter "shall be void" for "lack of due process."

Thus, we determined that respondent failed to offer a reasonable explanation for failing to file a conforming answer and for failing to set forth a specific and meritorious defense to the underlying charges. Accordingly, on January 24, 2024, we issued a letter denying respondent's MVD.

Panel Chair's Determination to Strike Respondent's Answer

Next, we conclude that the OAE and the Panel Chair followed the correct procedures in addressing respondent's answer to the complaint.

In In the Matter of Peter Jonathan Cresci, DRB 17-270 (Oct. 23, 2017), we set forth the procedures necessary to deem an attorney to be in default because their answer fails to comply with R. 1:20-4(e) and the principles of Gavel. Id. at 1. A special master or a hearing panel, once assigned, may schedule a pre-hearing conference where the sufficiency of both the OAE's complaint and the attorney's answer may be analyzed, pre-hearing orders issued, and the need for sanctions addressed. Id. at 2. If the special master or hearing panel

determines that the attorney should file a more compliant answer but the attorney fails to do so, the factfinder may then suppress the answer pursuant to R. 1:20-5(c). Ibid. If the special master or hearing panel strikes the answer as non-compliant with Gavel and R. 1:20-4(e), the matter may then be certified to us as a default. In the Matters of Peter Jonathan Cresci, DRB 18-124 and 18-196 (Dec. 12, 2018) at 24.

Here, between October 2022 and July 2023, the OAE and the Panel Chair advised respondent, on at least twelve separate occasions, of his obligation to file an amended answer that conformed to the requirements of Gavel and R. 1:20-4(e). On August 30, 2023, following respondent's refusal to file a conforming answer, the OAE filed a motion to strike the answer and to request that the Panel Chair certify the record in this matter to us as a default, pursuant to R. 1:20-4(f)(2). Following respondent's September 11, 2023 opposition to the motion, on November 8, 2023, the parties were granted the opportunity to appear before the Panel Chair for oral argument. Thereafter, the Panel Chair issued an order striking respondent's answer for failing to comply with R. 1:20-4(e) and the principles of Gavel and directing that the matter be certified to us as a default.

Based on the procedural history of this matter, we conclude that the OAE and the Panel Chair properly followed the procedures set forth in Cresci.

Violations of the Rules of Professional Conduct

Turning to our review of the record, we find that the facts set forth in the formal ethics complaint support all but one of the charges of unethical conduct. Respondent's failure to file a conforming answer to the complaint is deemed an admission that the allegations are true and that they provide a sufficient basis for the imposition of discipline. R. 1:20-4(f)(1).

Notwithstanding that Rule, each charge in the complaint must be supported by sufficient facts for us to determine that unethical conduct has occurred. In re Pena, 164 N.J. 222 (2000) (describing the Court's "obligation in an attorney disciplinary proceeding is to conduct an independent review of the record, R. 1:20-16(c), and determine whether the ethic[s] violations found by us have been established by clear and convincing evidence"). We will, therefore, decline to find a violation of a Rule of Professional Conduct where the admitted facts within the certified record do not constitute clear and convincing evidence that the Rule was violated. See, e.g., In the Matter of Philip J. Morin, III, DRB 21-020 (September 9, 2021) at 26-27 (declining to find a charged RPC 3.3(a)(4)

violation based upon insufficient evidence in the record), so ordered, 250 N.J. 184 (2022); In the Matter of Christopher West Hyde, DRB 16-385 (June 1, 2017) at 7 (declining to find a charged RPC 1.5(b) violation due to the absence of factual support in the record), so ordered, 231 N.J. 195 (2017); In the Matter of Brian R. Decker, DRB 16-331 (May 12, 2017) at 5 (declining to find a charged RPC 8.4(d) violation due to the absence of factual support in the record), so ordered, 231 N.J. 132 (2017).

Engaging in the Unauthorized Practice of Law

Respondent violated RPC 5.5(a)(1) by knowingly practicing law while administratively ineligible – specifically, by corresponding with the Appellate Division concerning PCH's appeal. On November 20, 2020, after the Court had declared him ineligible to practice law for failing to pay the annual assessment to the CPF and to comply with the mandatory procedures for annual IOLTA registration, respondent sent messages to the Appellate Division requesting an update on the scheduling of oral argument. In one of his messages, respondent asserted, without any support, that the Court had "erroneously" declared him ineligible after the OAE had "pressured" "at least one" of the Court's "administrative offices" to render him ineligible based on his involvement in

PCH's appeal. Thereafter, on November 23, 2020, the Appellate Division advised respondent that, due to his ineligibility to practice law, he would not be permitted to participate in oral argument. In reply, respondent declared that he did "not recognize any suspension of my law license to practice" based on his view that his ineligibility "was unwarranted and retaliatory." Further, respondent demanded that an Appellate Division employee deliver his message "to the judges" and "charg[ed]" the employee "with personal responsibility for confirming its delivery."

In March 2021, nearly four months after the Appellate Division had reminded respondent of his ineligibility, the Appellate Division issued an order stating that PCH's appeal would be dismissed, with prejudice, if it did not obtain substitute counsel. Respondent, however, was either unable or unwilling to execute a substitution of attorney to permit PCH's new lawyer to be substituted as counsel. Respondent's actions forced the Appellate Division to issue another order expressly recognizing PCH's new attorney as counsel of record. Respondent then accused the Appellate Division of "unlawfully interfering with my client and its representation in this matter" by allowing PCH to prosecute its appeal through a new attorney in good standing,

Based on these circumstances, respondent openly defied his ineligibility to practice law, proclaimed that he did not "recognize" his ineligibility based on his conspiratorial view that it was the product of retaliation by the OAE, and appeared to have refused to comply with substitute counsel's attempts to assume the representation.

Respondent further violated RPC 5.5(a)(1) by knowingly practicing law, before Judge Mizdol, while suspended. Specifically, in August 2021, after Judge Mizdol had advised respondent of his July 2021 temporary suspension, respondent sent Judge Mizdol four letters improperly holding himself out as a licensed New Jersey attorney and demanding that Judge Mizdol conduct "a hearing" concerning his interactions with the OAE and law enforcement and the "various lawsuits" that he had "filed . . . on behalf of clients." In his letters, respondent maintained that he had evidence of an alleged "criminal conspiracy" by government officials in Passaic and Bergen counties involving real estate and tax lien "fraud" and "embezzlement." As the OAE had asserted in its formal ethics complaint, respondent's alleged real estate "fraud" and "embezzlement" were the subject of Bascom's lawsuit against PCH. Consequently, respondent was, in effect, requesting a hearing before Judge Mizdol concerning not only his personal legal issues, but also the substance of PCH's pending civil action.

In his August 19, 2021 letter, respondent told Judge Mizdol that she was "required to conduct a hearing" concerning his "allegations" or else he would "pursue [his] rights in the public forum." The next day, on August 20, respondent sent Judge Mizdol another letter stating that he was willing "to provide sworn testimony against" various judges, who, in his view, "prevent[ed [him] from presenting [his] case on the record so that false and facetious orders can be granted that deprive me of my rights and create a false narrative that is not based in law or fact." Respondent concluded by stating that his demand constituted "a time sensitive matter" for which he would not afford Judge Mizdol "the luxury of . . . any breathing room."

On August 24, 2021, Judge Mizdol sent respondent a reply letter directing that he comply with R. 1:20-20 governing suspended attorneys, advising him that it was improper to hold himself out as a licensed attorney, and finding that his request for a hearing was "improper and misplaced." Hours later, respondent sent Judge Mizdol another letter in which he continued to use the title "Esq." and proclaimed that the Judge had "no legal basis for ordering me to comply with false and facetious orders that were forced through sham proceedings with a total disregard for due process." Respondent also accused Judge Mizdol of engaging in "unconscionable conduct" for refusing to capitulate to his demand

for a hearing and threatened that her "conduct void[ed] any qualified immunity you may have held due to your office."

Consistent with his prior conduct toward the Appellate Division regarding the status of his law license, respondent's correspondence with Judge Mizdol demonstrates that he openly refused to accept the validity of the Court's temporary suspension Order and attempted to leverage the status of his suspended law license to request court hearings concerning, among other things, the "various lawsuits" that he had "filed . . . on behalf of clients." Indeed, respondent's correspondence falsely implied that Judge Mizdol could face liability for not yielding to his improper request for such hearings. Based on these circumstances, respondent openly defied the Court's temporary suspension Order by practicing law while suspended.

Failing to Comply with the Court's Order and to Cooperate with the OAE

Respondent violated RPC 8.1(b) by failing to cooperate with the OAE's investigation of his firm's financial records. Moreover, he violated RPC 8.4(d) by failing to comply with the Court's September 10, 2021 Order requiring that he provide the OAE with information concerning his attorney accounts.

Specifically, on August 10, 2021, the OAE sent respondent a letter requiring that he disclose, among other information, the names of the financial institutions in which he maintained his attorney accounts. Respondent, however, failed to reply, following which, on September 10, 2021, the Court issued an Order directing that he disclose to the OAE the identifying information associated with his attorney accounts. Thereafter, respondent failed to reply to the OAE's September 16, letter directing that he comply with the Court's Order.

One month later, on October 15, 2021, the OAE sent respondent a letter and an e-mail reminding him of his obligation to comply with the Court's September 10 Order. In reply, respondent falsely declared that he had "not been served with any valid order" and that he had "no legal, ethical or moral obligation to respond to any of [the OAE's] correspondence[,]" which he proclaimed were "void for a lack of due process." Additionally, respondent baselessly accused the OAE of "engag[ing] in a criminal racketeering conspiracy" with "judges, prosecutors, and politicians."

Like his statements toward the Appellate Division and Judge Mizdol concerning the status of his law license, respondent openly declared the Court's September 10, 2021 Order to be void and proclaimed that he had no obligation to participate in the OAE's investigation of his attorney accounts. Rather than

attempt to comply with the Court's and the OAE's directives, respondent continued to launch baseless, conspiratorial attacks against the OAE, judges, and members of law enforcement. Respondent's open defiance of the Court's Order and of the OAE's financial investigation clearly constituted violations of RPC 8.1(b) and RPC 8.4(d).

Failing to Comply with R. 1:20-20

R. 1:20-20(b)(15) requires a suspended attorney, within thirty days of the Order of suspension, to "file with the Director [of the OAE] the original of a detailed affidavit specifying by correlatively numbered paragraphs how the disciplined attorney has complied with each of the provisions of this rule and the Supreme Court's [O]rder."

As the Appellate Division has noted, "the provisions of R. 1:20-20(b)(1) to (14) are designed to protect clients of the [suspended or] disbarred attorney, as well as any other individuals who might unknowingly seek to retain that attorney during the period of his suspension." Eichen, Levinson & Crutchlow, LLP v. Weiner, 397 N.J. Super. 588, 596 (App. Div. 2008). Non-compliance with R. 1:20-20 therefore obstructs one of the primary purposes of the disciplinary system, "to protect the public from an untrustworthy lawyer." In re

Rigolosi, 107 N.J. 192, 206 (1987) ("The purpose of a disciplinary proceeding, as distinguished from a criminal prosecution, is not so much to punish a wrongdoer as it is to protect the public from an untrustworthy lawyer.") (citing In re Pennica, 36 N.J. 401, 418-19 (1962)). It may also cause "confusion among . . . clients and an administrative burden for the courts." In re Kramer, 172 N.J. 609, 626 (2002).

For those reasons, and by operation of Rule, in the absence of an extension by the Director of the OAE, failure to file an affidavit of compliance pursuant to R. 1:20-20(b)(15) within the time prescribed "constitute[s] a violation of RPC 8.1(b) . . . and RPC 8.4(d)." R. 1:20-20(c).

Here, respondent willfully violated the Court's July 27, 2021 temporary suspension Order and failed to file the affidavit required of all suspended attorneys. He, thus, violated R. 1:20-20 and, consequently, RPC 8.1(b) and RPC 8.4(d).

Compounding matters, on December 17, 2021, following the OAE's specific requests that he file the affidavit, respondent sent the OAE a letter in which he again proclaimed that he was "in possession of no valid order suspending me from practice." Respondent further stated that "[a]ny purported order served by the OAE or any of its associates is the product of fraud upon the

Court, the State of New Jersey, and represents criminal retaliation against my person." Respondent also declared that he had "no obligation to comply with any order that was blatantly and criminally entered without due process and with blatant retaliatory intent." Finally, respondent "demanded a hearing" before the Court regarding what he viewed as the OAE's "reckless, immoral, and illegal conduct," and he announced that the OAE's "recent demand and all subsequent demands, along with those of your co-conspirators, will be ignored as legally void." Once again, respondent's declarations to the OAE demonstrate his emphatic, articulated belief that he is not subject to the jurisdiction of the Court and disciplinary authorities.

Failing to File an Answer to the Formal Ethics Complaint

The third and final RPC 8.1(b) charge in this matter stems from respondent's initial failure to file answer to the formal ethics complaint. Specifically, following respondent's failure to reply to the OAE's August 23, 2022 correspondence enclosing a copy of the formal ethics complaint, on September 21, 2022, the OAE sent respondent a second letter informing him that its correspondence "serve[d] as an amendment to the complaint" to charge "a willful violation of RPC 8.1(b)" for his "failure to answer."

However, as detailed above, respondent filed an answer to the formal ethics complaint, albeit one that altogether failed to comply with the requirements of R. 1:20-4(e) and the principles of Gavel. Because the RPC 8.1(b) charge was premised on respondent's initial "failure to answer" the complaint and not on his subsequent failure to file a conforming answer, we determine to dismiss the charge as inapplicable to the facts of this matter. Nevertheless, the dismissal of that charge does not alter our finding that the OAE properly certified this matter to us as a default, pursuant to the procedures set forth in Cresci, following respondent's refusal to file a conforming answer.

In sum, we find that respondent violated RPC 5.5(a)(1) (two instances), RPC 8.1(b) (two instances), and RPC 8.4(d) (two instances). We dismiss the third RPC 8.1(b) charge premised upon respondent's failure to file an answer as inapplicable to this matter. The sole issue left for determination is the appropriate quantum of discipline for respondent's misconduct.

Quantum of Discipline

The crux of respondent's misconduct is his practice of law while suspended, refusal to cooperate with the OAE or to accept its investigative authority, and open defiance of R. 1:20-20 and multiple Court Orders.

Attorneys who practice law while suspended, including those who fail to comply with R. 1:20-20 or to cooperate with disciplinary authorities, have received discipline ranging from a lengthy term of suspension to disbarment, depending on the presence of other misconduct, the attorney's disciplinary history, and aggravating or mitigating factors. See, e.g., In re Gonzalez, __ N.J. __ (2022), 2022 N.J. LEXIS 996 (one-year suspension for an attorney who, during a three-month term of suspension, called the Motor Vehicle Commission (the MVC) on behalf of a friend whose driver's license had been suspended, identified himself as an attorney, and requested information on how to adjourn the friend's MVC hearing; thereafter, the attorney accompanied his friend, in a representative capacity, to the MVC hearing, where the attorney presented an MVC employee with a business card of another lawyer with an active law license; following the attorney's failure to produce his own driver's license or social security number to confirm his identity, the attorney left the MVC; prior 1995 reprimand, 2012 admonition, and 2017 three-month suspension); In re Stack, 255 N.J. 325 (2023) (two-year suspension for an attorney, in a default matter, who practiced law while temporarily suspended in two matters spanning more than a year apart; in the first matter, the attorney requested that a bankruptcy court adjourn his client's matter, even though the case had been

dismissed; in the second matter, the attorney twice appeared at the Court Clerk's Office in an attempt to file documents; the attorney also grossly mishandled three matters, resulting in the issuance of judgments against his client totaling $128,192, committed negligent misappropriation and recordkeeping violations, and failed to cooperate with the OAE; prior 2019 admonition and 2022 reprimand); In re Kim, 241 N.J. 350 (2020) (Kim I) (three-year suspension for an attorney who, following his temporary suspension for refusing to cooperate with the OAE's financial audit, continued to practice law by representing one client in connection with his purchase of a liquor license and a second client in connection with a real estate transaction; the attorney also failed to comply with R. 1:20-20 following his temporary suspension and refused to comply with a separate Court Order requiring that he disclose his financial records to the OAE; prior 2015 censure); In re Kim, __ N.J. __ (2022), 2022 N.J. LEXIS 1068 (Kim II) (attorney disbarred, in a default matter, for practicing while suspended for almost three-and-a-half years following his temporary suspension, in connection with sixteen small business loan closings before the United States Small Business Administration (the SBA); during each loan closing, the attorney falsely certified that he maintained an active New Jersey law license; the attorney also ignored the OAE's communications, spanning several months,

which required him to reply to the SBA's ethics grievance; prior 2015 censure and 2020 three-year suspension underlying the Kim I matter).

We are most disturbed by respondent's repeated declarations to the OAE that he had no obligation to comply with its investigation, which he unilaterally deemed "void for lack of due process," and his articulated intention that he would "continue to hold all orders issued by the OAE, the [Board], and the New Jersey Supreme Court Clerk as void, and shall continue to practice law to the best of his ability."

Recently, in In re Harmon, __ N.J. __ (2022), 2022 N.J. LEXIS 658, the Court disbarred an attorney who openly declared that she was not subject to the jurisdiction of state courts and disciplinary authorities, yet, attempted to use the court systems, government agencies, and the rule of law as a means to achieve her personal objectives. In the Matter of Rhashea Lynn Harmon, DRB 21-228 (March 29, 2022). Specifically, in April 2015, following her refusal to pay rent to her landlord, Harmon agreed to vacate her apartment. Id. at 5. However, after her landlord had replaced the locks on the apartment door, Harmon broke into the apartment, resulting in criminal charges. Id. at 6. During a preliminary hearing on her criminal charges, Harmon refused to identify herself, was uncooperative, and made baseless objections. Ibid. Thereafter, Harmon failed to

appear for her scheduled arraignment, prompting the judge to issue a warrant for her arrest. Id. at 7. Harmon remained a fugitive until her arrest, in October 2021. Id. at 28.

In June 2015, following her initial involvement with the criminal justice system, Harmon filed a frivolous federal lawsuit against her former landlord and his attorney. Id. at 7-8. Two months later, in August 2015, the federal court dismissed Harmon's lawsuit for failing to state a claim and for lack of jurisdiction. Id. at 8. Thereafter, in 2016, Harmon filed fraudulent tax forms with the Internal Revenue Service in which she falsely identified herself as the "payer" and claimed that her former landlord and his attorney each had received more than $600,000 in income from her. Id. at 9. Additionally, on the eve of her August 2019 Pennsylvania disciplinary hearing, Harmon purported to serve her former landlord and Pennsylvania disciplinary authorities with a frivolous "Notice of Audit." Ibid.

Meanwhile, following her September 2017 administrative suspension in Pennsylvania, Harmon sent letters to her adversary informing him that she had been retained to defend her clients in a pending foreclosure action. Id. at 10. Harmon's letters falsely indicated that she was licensed to practice law in Pennsylvania. Ibid. Following the adversary's motion for declaratory relief

seeking a finding that Harmon had engaged in the unauthorized practice of law, Harmon filed a reply claiming that, as a sovereign citizen, she was not required to pay her annual registration fees in any jurisdiction. Id. at 10-12. Harmon also erroneously proclaimed the Pennsylvania Supreme Court's administrative suspension order to be invalid and expressed her position that Pennsylvania disciplinary authorities had no jurisdiction over her. Id. at 25. During a subsequent court appearance before a Pennsylvania judge, Harmon again falsely held herself out as an attorney authorized to represent her clients. Id. at 13.

We determined that Harmon's attempts to question the legitimacy of the Pennsylvania Supreme Court's administrative suspension order demonstrated her total disdain for attorney regulation and discipline and indicated "an ongoing propensity to continue practicing law, notwithstanding any orders prohibiting her from doing so." Id. at 27-28. We also observed that, at one point, Harmon credibly had applied her legal acumen to earn admission to the bars of New Jersey, New York, and Pennsylvania. Id. at 32. Nevertheless, at some point, and for reasons unknown, Harmon determined that, not only was she no longer subject to the jurisdiction of courts or attorney disciplinary authorities, but that the rule of law no longer applied to her. Ibid.

Harmon had not acted in conformity with the rule of law or the standards of the profession for at least eight years, and she indicated that she would not in the future. Id. at 37. We also found that she had abandoned her oath of office and had "emphatically articulated her belief that she [was] not subject to the jurisdiction of disciplinary authorities." Ibid. Consequently, we determined that Harmon "could never practice in conformity with the standards of the profession." Ibid. Similarly, we emphasized that "the reputation of the bar cannot tolerate individuals who abandon the very oaths that we take upon admission." Ibid. In determining that disbarment was the only appropriate sanction, we observed that Harmon's "egregious acts of misconduct and her unambiguous statements that she was not subject to attorney disciplinary systems rendered her a clear and present danger to the public." Ibid. The Court agreed with our recommendation and disbarred Harmon, following her failure to appear for the Court's Order to Show Cause.

Like Harmon, respondent has made numerous, unambiguous statements, unilaterally declaring Court Orders void based on his meritless, conspiratorial views of both individual disciplinary members and the Court-constructed attorney regulatory system. Even more alarming, respondent has openly announced that he will continue to ignore the OAE's requests for information

"as legally void" and that, despite his administrative ineligibility and temporary and disciplinary suspensions, he will simply continue to practice law. Indeed, in every correspondence contained in the record before us, respondent utilized the title "Esq." and, in some instances, boldly proclaimed that he was a "Licensed Attorney in the State of New Jersey," in defiance of both his suspended and ineligible status.

Respondent's refusal to acknowledge the legitimacy of the Court's restrictions placed on his law license needlessly wasted the Appellate Division's and Judge Mizdol's resources, obstructed PCH's ability to pursue its appeal, and represents a clear and present danger to the public. As we found in Harmon, "attorneys who are privileged to practice law in the State of New Jersey must be of good character and demonstrate respect for the authority of courts and attorney disciplinary systems." Harmon, DRB 21-228 at 35; see also In re Application of Matthews, 94 N.J. 59, 77 (1983) (finding that attorneys "must possess a certain set of traits – honesty and truthfulness, trustworthiness and reliability, and a professional commitment to the judicial process and the administration of justice"). Consistent with those principles, the bar cannot tolerate attorneys, like respondent, who explicitly declare that they are not subject to the Court's regulation or the jurisdiction of disciplinary authorities.

Moreover, respondent's behavior represents a continuation of his malicious treatment of judges, judiciary staff, and disciplinary members that has persisted, unabated, since his misconduct underlying Cubby I and Cubby II.

Recently, in In the Matter of Joshua F. McMahon, DRB 22-169 (March 27, 2023), we determined that a two-year suspension was the appropriate quantum of discipline for an attorney who, for several years, exhibited a total inability to conform himself with the professional standards expected of a lawyer. Id. at 110. Specifically, McMahon baselessly accused members of law enforcement agencies of official misconduct and perjury, and he threatened civil litigation, ethics grievances, and criminal charges against members of those same agencies whom he erroneously accused of engaging in conspiracies against him. Id. at 92-93. In another matter, McMahon belittled and demeaned the credentials of a hearing officer and, in a separate matter, engaged in belligerent and hostile treatment towards everyone involved in depositions, resulting in a court reporter walking out of one deposition in tears. Id. at 77-78, 94. During those depositions, McMahon repeatedly referred to opposing counsel as "burdens on taxpayers." Id. at 95. Moreover, McMahon baldly alleged that a judge and his adversary had engaged in collusion and, thus, impugned the integrity of the court. Ibid.

During the ethics proceedings, McMahon continued to malign everyone associated with the disciplinary process, including the special master and the OAE presenters. Id. at 107. In recommending a two-year suspension, we observed that:

> McMahon's scorched-earth strategy of maligning everyone whom he perceives as expressing any form of disagreement against him is alarming. He quickly resorts to name calling, profane language, allegations of conspiracies, and an overall confrontational approach in nearly every communication. Over a prolonged period, [McMahon] has demonstrated an incapacity to conduct himself appropriately and professionally. No one, including prosecuting attorneys, police officers, adversaries, judges, and witnesses, are immune from his volatile personality. Indeed, during his direct testimony at the ethics hearing, [McMahon] baldly accused the entire criminal and disciplinary systems of unchecked corruption, stating "[t]hat's who all of you are. If it's not clear to all of you that I'm prepared to get up in front of your justices, it should be."
>
> [Id. at 109.][8]

That matter is currently pending before the Court, on an Order to Show Cause.

[8] Chair Gallipoli and Members Hoberman and Rivera voted to recommend McMahon's disbarment and wrote a separate dissent, finding that McMahon's behavior was so contemptable that disbarment was necessary for the protection of the public and the preservation of the integrity of the bar.

Like McMahon, respondent has routinely exhibited a confrontational and vitriolic approach in virtually all his communications contained in the record before us. Specifically, when Judge Mizdol and the OAE attempted to ensure his compliance with Court Orders and R. 1:20-20, respondent became incensed and baselessly accused those officials of engaging in a criminal conspiracy from which they could face civil or criminal liability. Moreover, during the ethics proceedings before the DEC, respondent accused the Panel Chair and the OAE of engaging in cronyism, despite their persistent, good faith efforts to remind him of his obligation to file a conforming answer.

Similarly, when the Panel Chair informed the parties of his need to reschedule the OAE's motion to strike due to the passing of his mother, respondent accused the Panel Chair of falsifying his mother's obituary "to unlawfully gain an advantage in this matter." Following the Panel Chair's determination to strike his nonconforming answer, respondent posted, on a social media website, a retaliatory review of the Panel Chair's law firm in which he falsely proclaimed the firm to be "a criminal organization." Respondent even directly contacted members of the Panel Chair's firm and attempted to extract a "settle[ment]" from the firm based on his frivolous claim that it owed him "damages" for the Panel Chair's participation in this matter.

In the face of respondent's unrelenting attacks against him and his law firm, the Panel Chair demonstrated extraordinary patience and courtesy. As the Court has observed, dedicated DEC members, like the Panel Chair, constitute "a key component of the intake and overall disciplinary process." Robertelli v. New Jersey Office of Atty. Ethics, 224 N.J. 470, 489 (2016). However, New Jersey's largely volunteer-based disciplinary system would be unsustainable if attorneys, like respondent, are permitted to defame, harass, and threaten those volunteers for attempting, in good faith, to elicit their participation in the disciplinary process.

Not even judges and court staff in jurisdictions where respondent had no pending matters were immune from his vitriol. Specifically, following respondent's unsuccessful demand to "go on the record" before Judge Lougy, respondent announced his intent to publish a recording of his telephone conversation with the Judge's law clerk whom he accused of offering "evasive and dilatory responses" to his demand. Moreover, when respondent discovered that his letter to Judge Shipp demanding a "case management conference" was not delivered, respondent sent correspondence to the OAE, the Court Clerk's Office, and various law enforcement agencies accusing the OAE and the Panel Chair's law firm of engaging in "possible cyber-crimes" based on his articulated

belief that the OAE or the Panel Chair had arranged to "place[] a filter or block on []his e-mail address" to prevent his correspondence from being delivered.

However, unlike McMahon, who filed a conforming answer and proceeded to a disciplinary hearing, respondent refused to file a conforming answer and allowed this matter to proceed as a default. See In re Kivler, 193 N.J. 332, 342 (2008) (citations omitted) (an attorney's "default or failure to cooperate with the investigative authorities acts as an aggravating factor, which is sufficient to permit a penalty that would otherwise be appropriate to be further enhanced"). Also unlike McMahon, who had no prior discipline, this matter represents respondent's third consecutive default within the past three years. During each of his disciplinary matters, respondent has continued to malign everyone whom he perceives as expressing any form of disagreement with his demands. Consequently, respondent clearly has failed to utilize his extensive experiences with the disciplinary system to reform his conduct to the high standards expected of attorneys. See In re Zeitler, 182 N.J. 389, 398 (2005) ("[d]espite having received numerous opportunities to reform himself, [the attorney had] continued to display his disregard, indeed contempt, for our disciplinary rules and our ethics system.").

New Jersey disciplinary precedent makes it clear that, when an attorney behaves in a manner such "as to destroy totally any vestige of confidence that the individual could ever again practice in conformity with the standards of the profession," that attorney should be disbarred. In re Templeton, 99 N.J. 365, 376 (1985). Similarly, in In the Matter of Marc D'Arienzo, DRB 16-345 (May 25, 2017) at 26-27, we found that disbarment was the only appropriate sanction given the lack of evidence that the attorney could ever return to practice and improve his conduct. Specifically, we found:

> Given the contemptible set of facts present in these combined matters, we must consider the ultimate question of whether the protection of the public requires respondent's disbarment. When the totality of respondent's behavior in all matters, past and present, is examined, we find ample proof that . . . no amount of redemption, counseling, or education will overcome his penchant for disregarding ethics rules. As the Court held in another matter, "[n]othing in the record inspires confidence that if respondent were to return to practice [from his current suspension] that his conduct would improve. Given his lengthy disciplinary history and the absence of any hope for improvement, we expect that his assault on the Rules of Professional Conduct would continue." In re Vincenti, 152 N.J. 253, 254 (1998). Similarly, we determine that, based on his extensive record of misconduct and demonstrable refusal to learn from his mistakes, there is no evidence that respondent can return to practice and improve his conduct. Accordingly, we recommend respondent's disbarment.

[D'Arienzo, DRB 16-345 at 26-27.]

The Court agreed with our recommendation and disbarred D'Arienzo. In re D'Arienzo, 232 N.J. 275 (2018).

Conclusion

Applying the principles set forth in Templeton and D'Arienzo, based on respondent's ongoing refusal to acknowledge the validity of his Court-ordered suspensions and ineligibility to practice law, his open declarations that he will continue to ignore the OAE's requests for information as "void," and his unrelenting and disturbing behavior towards judges, disciplinary members, and court staff spanning three consecutive default matters, we determine that, should respondent ever be restored to practice, his assault on the Rules of Professional Conduct will continue. In our view, respondent's conduct demonstrates that he is unable to act in conformity with the standards of the profession, and he has made clear that he will not do so in the future. Thus, to preserve the integrity of the bar and to protect the public from his dangerous practices, we determine to recommend to the Court that respondent be disbarred.

Members Joseph and Rodriguez voted to recommend the imposition of an indeterminate suspension, with the condition that, prior to his reinstatement,

respondent demonstrate that he has sought and successfully participated in psychological treatment.

Member Rivera was absent.

We further determine to require respondent to reimburse the Disciplinary Oversight Committee for administrative costs and actual expenses incurred in the prosecution of this matter, as provided in R. 1:20-17.

Disciplinary Review Board
Hon. Maurice J. Gallipoli, A.J.S.C. (Ret.),
Chair

By: */s/ Timothy M. Ellis*
Timothy M. Ellis
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of David R. Cubby, Jr.
Docket No. DRB 23-243

Decided: January 24, 2024

Disposition: Disbar

Members	Disbar	Indeterminate Suspension	Absent
Gallipoli	X		
Boyer	X		
Campelo	X		
Hoberman	X		
Joseph		X	
Menaker	X		
Petrou	X		
Rivera			X
Rodriguez		X	
Total:	6	2	1

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