SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 12-397
District Docket No. XIV-2010-0009E

IN THE MATTER OF	:
CLIFFORD L. VAN SYOC	:
AN ATTORNEY AT LAW	:

Decision

Argued: September 19, 2013

Decided: October 16, 2013

Timothy J. McNamara appeared on behalf of the Office of Attorney Ethics.

Heidi R. Weintraub appeared on behalf of respondent.

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

This matter came before us on a recommendation for a censure filed by the District IV Ethics Committee (DEC), based on respondent's violations of RPC 3.2 (failing to treat with courtesy and consideration all persons involved in the legal

process), RPC 3.5(c) (engaging in conduct intended to disrupt a tribunal), RPC 8.2(a) (making a statement that the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications of a judge), and RPC 8.4(d) (engaging in conduct prejudicial to the administration of justice). The violations stem from respondent's conduct during the deposition of his client.

For the reasons stated below, we determine to impose a six-month suspension on respondent for his misconduct.[1]

Respondent was admitted to the New Jersey bar in 1980. At the relevant times, he practiced law in Cherry Hill.

In 2003, respondent received an admonition for lack of diligence in a matter where, for a nine-month period, he failed to review his new clients' file. In the Matter of Clifford Van Syoc, DRB 03-013 (April 24, 2003).

In 2008, respondent was reprimanded for failure to communicate with the client in two employment discrimination

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[1] In a separate matter, respondent was charged with having violated RPC 3.5(b) (communicating ex parte with a judge, except as permitted by law) and RPC 8.4(d). The DEC dismissed those charges, a determination that the OAE did not challenge.

matters, as well as gross neglect and lack of diligence in one of them. In re Van Syoc, 198 N.J. 373 (2008).

On May 24, 2011, the Office of Attorney Ethics (OAE) issued a formal ethics complaint, charging respondent with having violated the above-referenced RPCs, as the result of the following conduct: unilaterally terminating the deposition of his client, Michele Stark, before it had concluded; calling the attorney conducting the deposition, grievant Kevin J. O'Connor, "stupid" and a "bush league lawyer;" threatening to call 9-1-1 because O'Connor was not leaving his office quickly enough; and stating that the Honorable Steven P. Perskie, J.S.C. (ret.) had "committed fraud in connection with the litigation" and was "in [O'Connor's] pocket."

In his March 2, 2012 verified answer, respondent denied that he had violated any of the RPCs cited in the ethics complaint. He admitted to having terminated the deposition, albeit "properly" and "in accordance with the Rules of Court." He admitted that he had called O'Connor "stupid," but denied that he had called him a "bush league lawyer." Instead, respondent claimed that he had said that O'Connor "had engaged in 'bush league tactics.'" He admitted to having directed his receptionist to call 9-1-1, but stated that, ultimately, it was

never done because his associate, Sebastian Ionno, told the receptionist to "hold off."

With respect to respondent's statement that Judge Perskie had committed fraud, respondent claimed that, to the contrary, he had asserted that O'Connor had committed fraud in the litigation. Respondent denied having said that Judge Perskie was in O'Connor's pocket; rather, he said that O'Connor "thought that Judge Perskie was 'in his pocket,' meaning under [O'Connor]'s complete control" (emphasis added).

Finally, notwithstanding these admissions, respondent claimed that the portions of the deposition transcript, reflecting the name calling, the reference to O'Connor's having Judge Perskie in his pocket, and the statement that Judge Perskie had committed fraud, were inaccurate.

On September 17, 2012, the DEC hearing panel received testimony from O'Connor, respondent, and court reporter Pearl Caramazza. After the hearing, the DEC received and considered certifications from Stark and Barbara Ballistreri, her co-plaintiff and also a client of respondent. Ballistreri was present during Stark's deposition.

Because respondent claimed that portions of the deposition transcript were inaccurate, Caramazza testified about the

practices and procedures that she follows in recording and transcribing a proceeding. A certified court reporter since 1975, Caramazza explained that, in addition to the steno machine, she has a computer with an automatic dictionary that translates her keystrokes into words. Both the machine and the computer are equipped with audio-recording devices.

Caramazza stated that, when she edits a transcript, she compares the dictionary's words to her keystrokes and corrects the words and other information that are not in a standard dictionary, such as proper names and addresses. After she has completed the editing, Caramazza signs a certification that states, among other things, that the transcript contains "the actual words that were said" and that they are "true." According to Caramazza, once the transcript is archived, the audio is automatically destroyed.

Caramazza stated that, in the case of Stark's deposition, when she edited the job, she listened to the audio and "went along with it as [she] did the transcript." Thus, she affirmed that the transcript reflected "exactly what was said, because [she] had the audio and [she] used it for the transcript."

Caramazza stood by her transcription of Stark's deposition. O'Connor, too, vouched for the accuracy of Caramazza's transcript.

With respect to the overall conduct of the attorneys throughout the deposition, Caramazza testified that O'Connor was calm and professional. In the beginning, she said, so was respondent, but, as the deposition went on, he became "nasty and insulting" to O'Connor.

O'Connor described respondent's demeanor throughout the deposition as "hot and cold." For example, respondent would tell the reporter to go "off the record" and then he would tell a joke. However, according to O'Connor, once he began exploring with Stark an area that respondent did not want explored, respondent began to accuse him of untoward conduct.

The specific conduct at issue involves two separate exchanges during the deposition. The first is as follows:

> MR. VAN SYOC: You're raising your voice now.
>
> MR. O'CONNOR: I disagree with you that there's any need for the comment you just made. You may not like where this deposition is going, but that does not mean you have the right to terminate.

> MR. VAN SYOC: Once again, you're acting in a snide, supercilious, condescending manner typical of your conduct in the court room when you had the judge in your pocket. Please stop it.
>
> [HPR,Ex.2,60-19 to 61-3.][2]

At the DEC hearing, O'Connor denied that he had addressed anyone in a condescending manner. In his view, "it was very apparent . . . that [respondent] was staging this to terminate the deposition."

Caramazza also denied that O'Connor had spoken in a condescending manner during the deposition. She denied that O'Connor had raised his voice, except when respondent argued with him, at which point O'Connor "raised his voice somewhat," albeit to respondent, not to the witness.

For his part, respondent stood by his claims that O'Connor had raised his voice and also spoke in a manner that was condescending, demeaning, and belittling.

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[2] "HPR" refers to the hearing panel report, dated October 15, 2012. "Ex.2" refers to the certified transcript of the deposition of Michele Stark, which took place on November 3, 2009 and is attached to the hearing panel report.

The second exchange is as follows:

MR. VAN SYOC: Is that a question for a deposition, sir, or are you trying to harass her?

MR. O'CONNOR: I'm not trying to harass her.

MR. VAN SYOC: She asked you a question, where is the document? Are we playing hide and go seek?

MR. O'CONNOR: I have a four-page memo here.

MR. VAN SYOC: Excuse me. Let's hear the prior question and his response back, because I may terminate these depositions if you're going to continue —

MR. O'CONNOR: Mr. Van Syoc, your continuing these threats to terminate a deposition is inappropriate.

(The witness and Ms. Ballistreri left the deposition room.)

MR. VAN SYOC: It's over. The deposition is over. No more finger waving. No more voice raising.

MR. O'CONNOR: We're going to get the judge on the phone right now.

MR. VAN SYOC: You can do whatever you want. The deposition is over at 4:10 p.m.

MR. O'CONNOR: This is inappropriate.

MR. VAN SYOC: Bush league lawyer.

(Unable to understand next comment.)

MR. O'CONNOR: We'll see. I hope you're ready for a call with the judge.

MR. VAN SYOC: The one that committed the fraud; the one who's going to be in the complaint I'm filing next week.

MR. O'CONNOR: All right.

MR. VAN SYOC: Excuse me? Excuse me, sir?

MR. O'CONNOR: I said I hope you're here for the judge.

MR. VAN SYOC: What do [sic] you just say before I said, "Excuse me?"

MR. O'CONNOR: I said "all right."

MR. VAN SYOC: Sounded like some sort of snotty comment.

MR. O'CONNOR: You have that part on the record where he says the judge is in my pocket, correct?

THE REPORTER: Yes.

MR. VAN SYOC: I hope so. Obviously, it was what we were dealing with — I said it was when you had a judge in your pockets, which was not Judge Nugent, it was Judge Persky [sic].

THE REPORTER: Are you calling the judge or are we done?

MR. VAN SYOC: I'm tired of your snotty comments. Guess who's doing that?

MR. O'CONNOR: You are [sic] conduct is outrageous.

MR. VAN SYOC: You're so stupid, you don't even know the courts are closed on Election Day.

MR. O'CONNOR: Outrageous.

MR. VAN SYOC: At least I don't lie and withhold document [sic] and try to take advantage of discovery and abuse people at depositions. 2the [sic] deposition is over. Please get out of my office, sir.

MR. O'CONNOR: Now you're throwing me out of your office, Mr. Van Syoc?

MR. VAN SYOC: Yes, I am.

MR. O'CONNOR: Because that's going to be the part that I tell the Ethics Committee. Your conduct today is outrageous.

MR. VAN SYOC: My client is in there crying because of your snotty —

MR. O'CONNOR: Oh, please. You didn't like the way the deposition was going, so you strategically cancelled it is what you did.

MR. VAN SYOC: Call 911.

MR. O'CONNOR: Go ahead, call 911.

MR. VAN SYOC: Get out of my office. Abusive attorneys are not welcome here.

Now, sir.

MR. O'CONNOR: Mr. Van Syoc, you'd better stop.

MR. VAN SYOC: Now. Get out of my office now.

MR. O'CONNOR: You are so out of control. I am not getting out of your office now. I am going to shut down my computer.

MR. VAN SYOC: Get out of here.

(Mr. Van Syoc left the deposition room.)

MR. VAN SYOC: Watch this guy so he doesn't try to steal anything. Get in there and watch him pack up.

MR. O'CONNOR: Can I get that expedited, please?

(An associate of Mr. Van Syoc stood in the doorway until Mr. O'Connor left.)

(Deposition concluded.)

[HPR,Ex.2,129-7 to 133-1.]

According to Caramazza and O'Connor, O'Connor had not been waving his finger at either respondent or Stark or raising his voice during the deposition.

When asked whether, as claimed by respondent, O'Connor was abusive during the deposition, Caramazza replied: "No. I felt sorry for Mr. O'Connor because he was trying to be a gentleman, and I thought [respondent] was the most abusive attorney I've ever worked with."

O'Connor denied that he was trying to harass Stark or that his mannerism had changed at all during the deposition. In O'Connor's view, respondent wanted to terminate the deposition because O'Connor "was getting into documents and an area that he was uncomfortable with."

O'Connor did admit that he "may have" raised his voice "a little bit" when respondent was telling O'Connor, "at the top of his lungs," to leave the office. However, O'Connor denied that he had raised his voice "at any time during the deposition."

Caramazza explained that, after respondent had called O'Connor a bush league lawyer, she inserted "(Unable to understand next comment.)" because the lawyers were talking over each other and so fast that she was unable to hear what respondent had stated or even to interrupt and ask what had been said.

Caramazza stood by the transcription of respondent's statement about fraud. She also stood by the transcription of respondent's reference to the judge's being in O'Connor's pocket. She answered in the affirmative to every question concerning whether respondent had actually stated what was recorded in the transcript.

O'Connor testified that Caramazza correctly transcribed respondent's statement about O'Connor's having the judge in his pocket. He pointed out that respondent had made this statement twice, which would mean that, if respondent were to be believed, Caramazza "got it wrong twice."

With respect to respondent's accusation that O'Connor had Judge Perskie in his pocket, O'Connor explained that "[i]t was a reference to something that had been going on with [respondent] since September where he claimed that Judge Perskie was in the pocket of the defense, which he would make in front of his clients and in front of a court reporter." At the deposition, the comment was made in front of respondent's two clients and Caramazza. Moreover, O'Connor explained:

> This was such a tremendous problem because it has so many dimensions. I mean, you have -- you have this problem with his clients, okay? This case hadn't been settled up to that point. Probably could have been settled with a different lawyer in the case.
>
> You have -- so you have his clients sitting there believing that a judge is in the defense's pocket. You have my client. My client thinks I'm an inept lawyer who can't get this guy to behave.
>
> You know, like, how can -- in their view how could all these motions be filed? What do you mean, we have to go back and

> have you prepare again and take a deposition again at our cost?
>
> So it had -- it was problematic on so many different levels.
>
> And interpersonal part, I'm the youngest of seven kids. I'm — I've got a thick skin. I was in the United States Air Force. I got a thick skin.
>
> But to sit there and have him say that in front of all these people and his staff, a court reporter I didn't even know, and his own client, it's humiliating. It is humiliating.
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> [T91-25 to T92-23.]

According to O'Connor and Caramazza, respondent did not attempt to retract or explain the statement about the judge being in O'Connor's pocket. He did not apologize for the comments to O'Connor during the deposition. O'Connor testified that respondent apologized "later."

Caramazza testified that, just before respondent said "It's over" and admonished O'Connor for his "finger waving" and "voice raising," respondent had "motioned his witness to go out of the room." Caramazza stated that, contrary to respondent's assertion, Stark "certainly" was not crying when she left the room. Moreover, Caramazza did not hear anybody crying in the adjacent room.

O'Connor, too, denied that Stark was "visably [sic] frightened" during the deposition. He denied that she was crying or even sniffling. He said that she and Ballistreri "weren't even upset" and that, when they left the room, neither of them was crying.

Caramazza testified that, after respondent told O'Connor to "get out of here," he stepped out the door and hollered to his associate to watch O'Connor so he did not try to steal anything. She observed a man standing in the doorway, leaning against the door, watching O'Connor pack up his things and leave the office. She saw nothing that would justify respondent's directive to his associate.

Caramazza explained how she felt about respondent's behavior:

> I was humiliated for Mr. O'Connor, truthfully, because I think he tried to be professional, even though it was hard. He did not respond in kind.
>
> I have never been at a deposition where someone was personally attacked. I've been at a lot of depositions where there was contention. It just happens. It happens all the time, but it's usually done in a

> very professional manner and it is about the subject at hand and the case law, I guess. It's not personal. This was personal.
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> [T53-6 to 16.][3]

After the deposition, Caramazza called her office and said that she did not want to work with either attorney again. The situation was "embarrassing," and she was "upset," although her request had nothing to do with O'Connor's behavior. Rather, she anticipated that O'Connor would obtain a court order, requiring the deposition to continue, and she did not want to be a part of that. Moreover, respondent had been "extremely unprofessional" and she did not want to work with him because she "expected a problem with the transcript."

According to O'Connor, respondent unilaterally terminated the deposition, without his input or consent. O'Connor then obtained a court order, requiring the deposition to continue. It was held at the courthouse and Ionno represented Stark.

Contrary to respondent's statement on the record at the deposition, it did not terminate at 4:10 p.m. Rather, Caramazza

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[3] "T" refers to the transcript of the ethics hearing on September 17, 2012.

testified that it was terminated after the lunch break, at around 1:00. O'Connor confirmed that the deposition was terminated at approximately 1:41.

With respect to respondent's claim that the transcript contained errors, O'Connor testified that, at no time following the deposition did respondent make a motion, under R. 4:16-4(d), to suppress those portions of the transcript that he believed to have been erroneously transcribed. Thus, according to O'Connor, respondent had waived his objection to the accuracy of the transcript.

O'Connor denied that he had done anything to provoke respondent on the day of Stark's deposition. When asked what prompted respondent to say the things he did at the deposition and to terminate it unilaterally, O'Connor answered: "He does it because he gets away with it, and he intimidates people, and that's how he operates."

O'Connor testified that, after the deposition was terminated, he filed an omnibus discovery motion, which included a report of respondent's misconduct at Stark's deposition. The

motion was heard by the Honorable Carol E. Higbee, J.S.C., P.J., who ordered that the transcript from Stark's deposition be forwarded to the OAE.[4]

In paragraph five of respondent's certification in opposition to the motion filed with Judge Higbee, he stated, among other things, that, when O'Connor began to question Stark about a particular document, which respondent claimed was improper, Stark became "extremely upset," was "visibly frightened," and "was on the verge of tears." Respondent further stated that, by the time he started calling O'Connor names, Stark was in his office crying.

In paragraph six, respondent admitted that, "in the heat of the moment," he called O'Connor "stupid" and a "bush league

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[4] O'Connor asked Caramazza for a copy of the audio tape, pursuant to the judge's request. She complied and sent it to O'Connor and to respondent. Thereafter, an agency representative called O'Connor and requested the return of the audio because it was work product. O'Connor complied, without ever having listened to the audio, which would have been impossible anyway due to a "funky format." The record does not reveal the disposition of the audio sent to respondent, although his counsel claimed, at oral argument before us, the audio was never sent to him, in the first place.

lawyer." He wrote: "I apologize to Mr. O'Connor and the Court" for doing so.

In paragraph seven, respondent stated the following:

> It is true that at one point in time in the deposition I described Mr. O'Connor's tone of voice, and objected to same, as being identical to that which he expressed in Court when he thought he had the "Judge in his pocket", an obvious reference to Judge Perskie, who concealed from us the fact that he is so close to certain partners in the FoxRothschild [sic] firm that he routinely disqualifies himself from those cases even to this date, yet failed to disclose that information in this case where FoxRothschild [sic] simultaneously prosecuted bogus disciplinary charges against both my clients while purporting to engage in a fair, neutral, and impartial investigation of the validity of their claims. I had known Judge Perskie for many years before this case came into my office, and always before this, believed him to be an extremely talented, intelligent, ethical, and moral Judge, and thus I was shocked at the series of rulings in this case entered by Judge Perskie which violated some very fundamental rules and laws. To this date, I still cannot fathom why Judge Perskie sat on the case even for a minute, in light of the fact that pursuant to the Appellate Division's holding in Rivers v. Cox-Rivers, 346 N.J. Super. 418 421 (App. Div. 2002), he had no business sitting on this case, and in light of the fact that he failed entirely to disclose the information which finally came to my attention when he recused himself from this and all of my other cases, in which he conceded that he was so close to certain senior partners at FoxRothschild he

> routinely disqualified himself from their cases. [If] [t]his information was made available to me as soon as the case was assigned to him, I would have, consistent with my duty as an officer of the court and as a zealous advocate for my client, moved to disqualify him. It is particularly troubling that Judge Perskie appears to have acted in this case in a way comparable to that which has been the subject of adverse publicity, and I must confess that I am still shocked at both the allegations relating to the charges presently pending against Judge Perskie, as well as his conduct in this case.
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> [Ex.3¶7.][5]

According to O'Connor, the statements in this paragraph were "absolutely false." He added that, instead of "taking ownership" of what respondent had said during the deposition, respondent "was trying to change what occurred by making it sound as if the defense thought that they had the Judge in their pocket."

At the disciplinary hearing, respondent admitted that he had called O'Connor "stupid" and a "bush league lawyer using those tactics," but stated that he had apologized for his

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[5] "Ex.3" refers to the Certification of Clifford L. Van Syoc, dated December 5, 2009, attached to the hearing panel report.

comments. He admitted that he had told his receptionist to call 9-1-1.

As to respondent's statement, in his answer to the formal ethics complaint, that his "discourtesy . . . to [O'Connor] was justified at the time and place under the circumstances," respondent was asked whether he believed that calling someone "stupid" was justified. He answered in the affirmative, stating that, although he regretted doing so and apologized for it later, O'Connor "was making my client cry and I have a legitimate client in the other room who's sobbing." Later, respondent testified that, although he should not have made those comments, they were "understandable and justifiable under the circumstances there present where my client is crying."

Respondent had the following to say, in reply to why he felt justified in calling O'Connor a bush league lawyer and stupid:

> Bush league was him using his voice to intimidate the witness and using the SCI documents, which is a bush league, low level practice of law. He struts around, tells people what a Super Lawyer he is, et cetera, et cetera, and that's why I mentioned that. I don't think a Super Lawyer or a good lawyer would have to use his tone of voice to intimidate people or would have to use a document he himself knows he can't use in

examination without himself violating Rules and regulations.

Q. So you're saying that Mr. O'Connor was strutting around during the deposition?

A. No. But he does strut around the courthouse, and he was definitely strutting around the courtroom when he got those rulings from Judge Perskie.

Q. Well, what justified you in your mind to call him bush league lawyer?

A. I already told you that. Using the SCI document in examination when he knew it was illegal to do that, simply as an intimidation tactic for my client.

[T119-25 to T120-21.]

Later, respondent denied having called O'Connor a bush league lawyer. Rather, he said that O'Connor was "using bush league lawyer tactics."

Respondent then acknowledged that Stark was not crying in the deposition room, where he described her as "tearful," but, rather, she was "sobbing" in his office, where he saw her after he had left the deposition room. When confronted with the fact that he was inconsistent in saying that he was justified in calling O'Connor stupid because O'Connor had made his client cry but later stating that she was not crying in the deposition

room, respondent stated that he did not recall if she was crying in the deposition room. He continued:

> I lost my temper. [O'Connor] made my clients cry. He wanted to call the Court. I would have been glad to talk to the Court. The Court could hear her cry. That he wasn't aware that the courts were weren't [sic] available during Election Day. That's why it came out the way it came out.
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> [T119-11 to 16.]

Respondent asserted that he had ordered O'Connor to leave his office because O'Connor "was delaying getting out of my office, and I thought that was upsetting my client." According to respondent, O'Connor refused to pack up his things. Therefore, respondent asked that 9-1-1 be called, which, he conceded, was not necessary. He did so because he was angry with O'Connor for making his client cry and for examining her on the SCI document to try to intimidate her.

As for the claimed errors in the transcript, respondent insisted that he did not state that O'Connor had the judge in his pocket, but that O'Connor "thought [he] had the judge in [his] pocket."

With respect to his statement that the judge had committed fraud and, therefore, would be named (presumably, as a defendant) in a complaint that he would be filing "next week,"

respondent stated that the deposition transcript was incorrect. However, there was no testimony from respondent at the DEC hearing as to what the transcript of his testimony should have reflected.[6]

Respondent could not recall whether he had filed a R. 4:16-4(d) motion, but he did point out the transcript errors in the certification that he filed with Judge Higbee. He claimed that there are "a variety of ways" to contest the content of a deposition: "One way is mine, and there's another one where you can make an application and have the Court rule." He claimed that he never saw someone proceed under the Court Rule.

At the ethics hearing, respondent relayed the history of how he believed that he and his client had been wronged by Judge Perskie in the civil action. When his discourse had concluded, respondent stated: "I'm not proud of what I did, but I don't think [O'Connor] should have made Michele Stark cry." The following exchange took place with a DEC panelist:

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[6] In respondent's certification to Judge Higbee, he stated that O'Connor's assertion that respondent had made this statement was "an outright lie" and that he, respondent, would be filing ethics charges against O'Connor.

BY MS. WENTWORTH:

> Q: Is it your position that if — in this particular case you would be referring to Mr. O'Connor, but if any attorney violates the Rules of Professional Conduct, acts improperly, or makes you mad, that you have the right to then ignore the Rules of Professional Conduct?
>
> A: No. No. No. I'm a big believer in the Rules of Professional Conduct. I think they should be followed. Sometimes they can't be because we're human.
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> [T147-8 to 18.]

Neither Stark nor her co-plaintiff attended the disciplinary hearing. On the one hand, respondent claimed that they were not present because he believed that the hearing would take two days, as he had requested, and he did not want one of his clients, who had an autistic child, to waste a day sitting around waiting to give testimony. On the other hand, he stated that he had not spoken to either client "in the last month or so."

In lieu of having the witnesses appear to testify on the limited issue of whether Stark was crying in the deposition room, the panel chair agreed to keep the hearing open and requested that respondent submit certifications from them on the

issue of when Stark was sniffling, tearing up, and breaking down and in what rooms of respondent's office these events occurred.

In her certification, Stark stated that, after the lunch break, O'Connor "appeared not to like [her] answer, and expressed by the volume and tone of his voice, that he was angry with [her]." Stark was upset but did her best to suppress her emotions by not crying.

According to Stark, it was after she and Ballistreri had exited the conference room and entered respondent's office that she "began sobbing" and "became hysterical." She refused to leave the office until she was assured that O'Connor and Caramazza had gone.

Ballistreri's certification mirrored Stark's. She stated that O'Connor had raised his voice, which "had an edge in it that seemed to communicate anger." She saw O'Connor shake his finger toward Stark, just before the deposition was terminated, and she could see that Stark was trying not to cry.

When Stark left the conference room, Ballistreri followed her into respondent's office, where Stark broke down and sobbed hysterically. Ballistreri remained there until she was assured that O'Connor and Caramazza had gone.

The DEC found that the transcript of Stark's deposition was "an accurate record of the statements made by Respondent" and that, before certifying the transcript, Caramazza had double-checked the written version against the audio recording, thus verifying the accuracy of the transcript. The DEC also found that the testimony of Caramazza and O'Connor was "entirely credible . . . that what is reflected in the transcript is what Respondent said."

Specifically, respondent stated to O'Connor, on two occasions, that O'Connor had Judge Perskie in his pocket. In this regard, the DEC found "incredible" respondent's assertion that, on both occasions, Caramazza had committed keystroke errors by omitting the words "'you thought' and/or 'you think'" and then failed to pick up on these errors, when she compared the draft to the audio recording.

The DEC found that respondent's comments about Judge Perskie constituted "false statements concerning the qualifications of a judge, in violation of RPC 8.2(a)." In addition, the DEC found that, because the comments were made in the presence of the plaintiffs, they were prejudicial to the administration of justice (RPC 8.4(d)), "in that such comments

undermine the integrity of, and serve to disrupt public confidence in, the judicial system."

The DEC accepted Caramazza's and O'Connor's testimony that O'Connor had acted professionally and had treated respondent and his client "with all due respect" and that he did not, "at any time," raise his voice, wave his finger, or hide documents from the witness. It rejected respondent's testimony to the contrary.

The DEC found that respondent had failed to treat O'Connor with courtesy and consideration (RPC 3.2) by his "admitted insults" to O'Connor that he is "stupid" and a "bush league lawyer," his directive to O'Connor to "leave immediately," after he had terminated the deposition, his directive to the receptionist to call 9-1-1, and his directive to his associate to watch O'Connor, while he packed up his things, to make sure that he did not steal anything.

The DEC rejected respondent's claim that he was justified in making the comments because O'Connor was trying to intimidate his client. Indeed, according to the DEC, even if O'Connor had been acting inappropriately toward Stark or respondent, respondent's conduct and statements would not have been justified.

The DEC found that respondent's unilateral termination of the deposition was unjustified. In this regard, the DEC noted that the certifications of Stark and Ballistreri corroborated Caramazza's and O'Connor's testimony that Stark was not crying when she left the conference room. According to the DEC, "the termination itself as well as the manner in which it was done constituted conduct intended to disrupt a tribunal and conduct prejudicial to the administration of justice," violations of RPC 3.5(c) and RPC 8.4(d).[7]

Finally, the DEC found that respondent had violated RPC 8.4(d) by making statements "in an attempt to create a false record," that is, by claiming that O'Connor was raising his voice, pointing his finger at Stark, hiding documents from her, and declaring that the deposition had concluded at 4:10, "when it was in reality hours earlier."

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[7] Respondent's counsel argued before us that the DEC "dismissed" the certifications and refused to permit the plaintiffs to testify. These comments were incorrect, given the record before us.

The DEC recommended the imposition of a censure and attendance at "a training course on the Rules of Professional Conduct" for the following reasons:

> The panel finds the Respondent's history to be an aggravating factor. The panel unanimously determines that Respondent's conduct, statements, and premature termination of his client's deposition was [sic] not an isolated outburst but rather, an extended series of willful and escalating ethical violations over several hours, and that in light of his history of two prior ethics matters in which unethical conduct was found and discipline was imposed, that [sic] this extended period of repeated violations of numerous RPCs that occurred at Ms. Stark's deposition reflects an attitude of contempt toward the Rules of Professional Conduct and the attorney discipline system warranting a censure.
>
> [HPR§V.]

Following a de novo review of the record, we are satisfied that the DEC's finding that respondent's conduct was unethical is fully supported by clear and convincing evidence.

With one exception, the DEC was correct in its findings that respondent violated the charged RPCs. Specifically, the DEC should have dismissed the RPC 3.5(c) charge (engaging in conduct intended to disrupt a tribunal). That RPC relates to conduct that takes place either before a tribunal or in disregard of a tribunal's rulings. See, e.g., In the Matter of

Gerald L. Del Tufo, DRB 10-127 (June 25, 2010) (admonition imposed on attorney who, while in attendance at municipal court, accused the judge and prosecutor of collusion; the attorney expressed remorse and had an unblemished disciplinary history in his twenty years of practice) and In the Matter of Jamie M. Epstein, DRB 06-191 (September 28, 2006) (admonition for attorney's persistence in arguing evidentiary points before an Administrative Law Judge after the ALJ had already made his rulings and despite his warnings that the attorney's conduct could be met with sanctions; the attorney had an apparently troubled history with the ALJ, which colored his actions in the matter, as well as an unblemished disciplinary record).

Here, no judge or court order played a role in respondent's misconduct, which was confined to a deposition attended by the court reporter, counsel, and respondent's clients. Although respondent clearly disrupted the deposition, he did not disrupt a tribunal. Thus, we dismiss the RPC 3.5(c) charge.

The other charged RPCs, however, do govern respondent's inappropriate behavior at the deposition. He failed to treat O'Connor with courtesy and consideration. Respondent's name-calling and intimidation tactics violated RPC 3.2, which requires an attorney to "treat with courtesy and consideration

all persons involved in the legal process." Moreover, by engaging in this behavior in front of his clients and Caramazza, respondent violated RPC 8.4(d), which proscribes engaging in conduct prejudicial to the administration of justice. Although respondent apologized to O'Connor for his comments in the certification submitted to Judge Higbee, it was eviscerated at the hearing where, instead of expressing contrition and remorse, he stubbornly insisted that his inappropriate behavior was justified.

Further, respondent violated RPC 8.2(a), which prohibits an attorney from making a statement "that the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications of a judge." Without any apparent basis, other than his own opinion, respondent declared Judge Perskie to be corrupt, in the broadest sense possible, by stating that the judge was in O'Connor's pocket. Because these unsubstantiated attacks on the judge were made in front of respondent's clients and Caramazza, they also constituted violations of RPC 8.4(d).

Although the DEC found that respondent had attempted to create a false record, a violation of RPC 8.4(d), the complaint did not charge him with that violation, based on those facts.

Therefore, we are unable to accept the DEC's determination in this regard.[8]

In sum, we find that respondent violated RPC 3.2, RPC 8.2(a), and RPC 8.4(d).

We note and dismiss the multitude of issues raised by respondent's counsel, whose notice of appearance was presented to us at oral argument when respondent announced that she would be speaking on his behalf.[9] First, as to the alleged

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[8] Parenthetically, at oral argument before us, respondent's counsel asserted that, instead of stating "[t]he deposition is over at 4:10 p.m.," respondent actually stated "I'm going to move under 4:10-3." We note that counsel's assertion is contrary to the context of the discussion between the two attorneys, which was prompted by respondent's declaration that "[t]he deposition is over."

[9] We did not receive a brief from respondent until more than a week after oral argument. We note that the brief repeats the arguments of counsel and draws our attention to an unpublished Appellate Division decision that was decided on September 5, 2013. The decision addresses the intentional destruction of evidence by a party and, thus, has little relevancy here. There is no suggestion, much less evidence, that the court reporter erased the audiotape of the deposition in bad faith or with the intent to conceal evidence. Moreover, the court reporter heard what respondent said, personally reviewed the audiotape, and certified that her transcript was accurate. There is no valid basis for an inference in respondent's favor under these circumstances. Even if there were, any such inference would not defeat the findings of unethical conduct.

inaccuracies in the deposition transcript, we accept the accuracy of the document for the following reasons: Caramazza had been a certified court reporter for thirty-four years, at the time of the deposition; in preparing the transcript, she confirmed her keystrokes with the aid of an audiotape; she and O'Connor testified that the transcript was accurate; and, because respondent never filed a motion to suppress the alleged defects in the deposition, under R. 4:16-4(d), his claims of error were waived.

Moreover, we reject as incredible respondent's assertion that he never said that O'Connor had Judge Perskie in his pocket, but, rather, that O'Connor "thought" he had Judge Perskie in his pocket. To find that respondent's assertion was true would require a finding that Caramazza made the same mistake twice and at different points in the deposition.[10]

Second, we reject counsel's claim that an adverse inference must be drawn from the alleged spoliation of evidence, that is,

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[10] Along these lines, we note respondent's counsel's references to Caramazza's being "flustered" and "frazzled" during the deposition, a claim that is contrary to her testimony at the disciplinary hearing.

the destruction of the audio recording of the deposition, which, in counsel's words, is the "best evidence" of what had actually transpired during the deposition. The "best evidence" of what transpired at the deposition is the transcript, not the audio recording. Further, in his answer, respondent claimed that, when he requested the audio Caramazza destroyed it. This claim is at odds with Caramazza's testimony that, upon completion of the certified transcript, she destroyed the audiotape, in accordance with the business practice of the court reporting agency that had assigned her to cover the deposition, not in response to his request for it.

Third, we reject respondent's counsel's "truth-is-a-defense" stand with respect to the RPC 8.2(a) and RPC 8.4(d) charges, as they pertain to his claim that O'Connor had Judge Perskie "in his pocket." We cannot rely upon respondent's mere perception of impropriety on the part of the judge to support the truth of such an overbroad accusation.

There is left for determination the appropriate quantum of discipline to be imposed on respondent for his ethics infractions.

Attorneys who, in violation of RPC 3.2, display disrespectful or insulting conduct to persons involved in the

legal process, including clients and judges, are subject to a broad spectrum of discipline, ranging from an admonition to a term of suspension. See, e.g., In re Gahles, 182 N.J. 311 (2005) (admonition imposed on attorney who, during oral argument on a custody motion, called the other party "crazy," "a con artist," "a fraud, . . . a person who cries out for assault," and a person who belongs in a "loony bin;" in mitigation, we considered that the attorney's statements were not made to intimidate the party but, rather, to acquaint the new judge on the case with what the attorney perceived to be the party's outrageous behavior in the course of the litigation); In the Matter of Alfred Sanderson, DRB 01-412 (2002) (admonition imposed on attorney who, in the course of representing a client charged with DWI, made discourteous and disrespectful communications to the municipal court judge and to the municipal court administrator; in a letter to the judge, the attorney wrote: "How fortunate I am to deal with you. I lose a motion I haven't had [sic] made. Frankly, I am sick and tired of your pro-prosecution cant;" the letter went on to say, "It is not lost on me that in 1996 your little court convicted 41 percent of the persons accused of DWI in Salem County. The explanation for this abnormality should even occur to you;" in mitigation,

we considered the attorney's "decades of service as a member of the bar and the fact that his conduct was motivated by zeal in representing his client); In the Matter of John J. Novak, DRB 96-094 (1996) (admonition for attorney who engaged in a verbal exchange with a judge's secretary; the attorney stipulated that the exchange involved "loud, verbally aggressive, improper and obnoxious language" on his part; we noted that, at the time of the incident, the attorney had been admitted to practice law for only one year and that, in the five years since the incident, he had not been involved in any further incidents of this type); In re Zeigler, 199 N.J. 123 (2008) (reprimand imposed on attorney who told the wife of a client in a domestic relations matter that she should be "cut up into little pieces . . . put in a box and sent back to India;" and in a letter to his adversary, accused her client of being an "unmitigated liar," that he would prove it and have her punished for perjury, and threatened his adversary with a "Battle Royale" and ethics charges; mitigating factors included that the attorney had an otherwise unblemished forty-year ethics history, that he recognized that his conduct had been intemperate, and that the incident had occurred seven years earlier); In re Geller, 177 N.J. 505 (2003) (reprimand imposed on attorney who filed baseless motions accusing two

judges of bias against him; failed to expedite litigation and to treat with courtesy judges (using profanity to characterize one judge's orders and, in a deposition, referring to two judges as "corrupt" and labeling one of them "short, ugly and insecure"), his adversary ("a thief"), the opposing party ("a moron," who "lies like a rug"), and an unrelated litigant (the attorney asked the judge if he had ordered "that character who was in the courtroom this morning to see a psychologist"); failed to comply with court orders (at times defiantly) and with the special ethics master's direction not to contact a judge; used means intended to delay, embarrass, or burden third parties; made serious charges against two judges without any reasonable basis; made a discriminatory remark about a judge; and titled a certification filed with the court "Fraud in Freehold;" in mitigation, the attorney's conduct occurred in the course of his own child-custody case, the attorney had an unblemished twenty-two-year career, was held in high regard personally and professionally, was involved in legal and community activities, and taught business law); the attorney also violated RPC 3.1, RPC 3.4(c), RPC 4.4, RPC 8.2(a), RPC 8.4(d), and RPC 8.4(g)); In re Milita, 177 N.J. 1 (2003) (reprimand imposed on attorney who wrote an insulting letter to his client's former paramour, the

complaining witness in a criminal matter involving the client; an aggravating factor was the attorney's prior six-month suspension for misconduct in criminal pretrial negotiations and for his method in obtaining information to assist a client); In re Lekas, 136 N.J. 514 (1994) (reprimand; while the judge was conducting a trial unrelated to her client's matter, attorney sought to withdraw from the client's representation; when the judge informed her of the correct procedure to follow and asked her to leave the courtroom because he was conducting a trial, the attorney refused; the judge repeatedly asked her to leave because she was interrupting the trial by pacing in front of the bench during the trial; ultimately, the attorney had to be escorted out of the courtroom by a police officer; the attorney struggled against the officer, grabbing onto the seats as she was being led from the room); In re Stanley, 102 N.J. 244 (1986) (reprimand; attorney engaged in shouting and other discourteous behavior toward the court in three separate cases; the attorney's "language, constant interruptions, arrogance, retorts to rulings displayed a contumacious lack of respect. It is no excuse that the trial judge may have been in error in his rulings."; we took into account, on the one hand, that the attorney's misconduct was not an isolated incident; on the other

hand, we observed that the attorney had been a member of the bar for more than thirty years, with no prior history, that he was sixty-seven years old and retired from the practice of law, and that there was no harm to a client or party as the result of his misconduct); In re Mezzacca, 67 N.J. 387 (1975) (reprimand; attorney referred to a departmental review committee as a "kangaroo court" and made other discourteous comments; although the Court could not condone the attorney's behavior, it noted that he had been a practicing attorney for twelve years, without having any ethics charged brought against him during that time, and that what he said and did appeared to have been the result of having become so personally involved in the cause of his client and the alleged injustice he anticipated, he allowed his emotional state to affect his judgment as an attorney); In re Rifai, 204 N.J. 592 (2011) (three-month suspension imposed on an attorney who called a municipal prosecutor an "idiot," among other things; intentionally bumped into an investigating officer during a break in a trial; repeatedly had the trial postponed, once based on a false claim of an accident on the Turnpike; and was "extremely uncooperative and belligerent" with the ethics committee investigator; the attorney also violated RPC 4.4(a), RPC 8.4(d), and RPC 8.1(b); the attorney had been reprimanded on

two prior occasions); In re Supino, 182 N.J. 530 (2005) (attorney suspended for three months after he had exhibited rude and intimidating behavior in the course of litigation and also threatened the other party (his ex-wife), court personnel, police officers, and judges; other violations included RPC 3.4(g), RPC 3.5(c), and RPC 8.4(d)); In re Vincenti, 114 N.J. 275 (1989) (three-month suspension for attorney who challenged opposing counsel and a witness to fight, used profane, loud and abusive language toward his adversary and an opposing witness, called a judge's law clerk "incompetent," used a racial innuendo at least once, and called a deputy attorney general a vulgar name); and In re Vincenti, 92 N.J. 591 (1983) (one-year suspension imposed on attorney who displayed a pattern of abuse, intimidation, and contempt toward judges, witnesses, opposing counsel, and other attorneys; the attorney engaged in intentional behavior that included insults, vulgar profanities, and physical intimidation consisting of, among other things, poking his finger in another attorney's chest and bumping the attorney with his stomach and then his shoulder).

In the following cases, the attorney's misconduct included violations of RPC 3.2, RPC 8.2(a), and RPC 8.4(d): In re Geller, supra, 177 N.J. 505; In re Garcia, 195 N.J. 164 (2008)

(on motion for reciprocal discipline from Pennsylvania, fifteen-month suspension imposed on attorney who, among other serious improprieties, accused four judges of extreme bias, and filed two frivolous lawsuits; in mitigation, the attorney had no disciplinary history, admitted the misconduct, and expressed remorse for her misdeeds); and In re Shearin, 172 N.J. 560 (2002) (on motion for reciprocal discipline from Delaware, three-year suspension imposed on attorney who, in a lawsuit involving a property dispute against a rival church, sought the same relief she had previously sought without success in prior lawsuits, knowingly disobeyed a court order expressly enjoining her and her client from interfering with the rival church's use of the property, demonstrated a reckless disregard for the truth when she made disparaging statements about the mental health of a judge, and taxed the resources of two federal courts, many defendants, and many other members of the legal system who were forced to deal with frivolous matters; the attorney had previously received a one-year suspension for similar misconduct).

At first blush, respondent's misconduct seems less egregious than that of the attorneys in the cases involving violations of RPC 3.2, as well as the attorneys in Geller,

Garcia, and Shearin, which also involved violations of RPC 8.2(a) and RPC 8.4(d). Yet, in most of the cases involving less than a suspension, the attorneys' misconduct was mitigated by several factors. Such is not the case here. There are no mitigating factors to weigh in respondent's favor. To the contrary, there are several aggravating factors. First, respondent has a disciplinary history, which includes an admonition and a reprimand. Second, he has shown no genuine remorse. The apology to O'Connor, which he expressed in his certification to Judge Higbee, was eviscerated by his continued claim, at the disciplinary hearing, that the name calling was "understandable and justifiable" under the circumstances. Third, and most troubling, respondent's misconduct occurred in front of his two clients, who, as plaintiffs in the very matter in which their lawyer had accused the judge of being in the pocket of the defense, were at risk of losing confidence in the legal system.

After consideration of the relevant circumstances, four members of this Board determine to impose a six-month suspension on respondent. Member Zmirich voted to impose a three-month suspension. Chair Frost and member Clark voted to impose a censure.

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
Bonnie C. Frost, Chair

By: Isabel Frank
Isabel Frank
Acting Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Clifford L. Van Syoc
Docket No. DRB 12-397

Argued: September 18, 2013

Decided: October 16, 2013

Disposition: Six-month suspension

MEMBERS	Disbar	Six-month Suspension	Three-month Suspension	Censure	Disqualified	Did not participate
Frost				X		
Baugh		X				
Clark				X		
Doremus		X				
Gallipoli		X				
Yamner		X				
Zmirich			X			
Total:		4	1	2		

Isabel Frank
Acting Chief Counsel