SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 13-331
District Docket No. XIII-2011-0022E

IN THE MATTER OF	:
JARED E. STOLZ	:
AN ATTORNEY AT LAW	:

Decision

Argued: January 16, 2014

Decided: March 18, 2014

Timothy B. McKeown appeared on behalf of the District XIII Ethics Committee.

Respondent waived appearance for oral argument.

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

On September 19, 2013, this matter was before us on a recommendation for an admonition, filed by the District XIII Ethics Committee ("DEC"), which we determined to treat as a

recommendation for discipline greater than an admonition. R. 1:20-15(f)(4). The DEC's recommendation for an admonition was based on respondent's violation of two counts of RPC 3.2 (failing to treat with courtesy and consideration all persons involved in the legal process), RPC 8.4(a) (violating the RPCs), RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation), and RPC 8.4(d) (conduct prejudicial to the administration of justice), which respondent stipulated, at the hearing before the DEC. However, the DEC found no clear and convincing evidence to support the charges in the third count of the complaint: RPC 3.2 (presumably, by failing to make reasonable efforts to expedite the litigation), RPC 3.3(a)(1) (knowingly making a false statement of material fact or law to a tribunal), RPC 3.3(a)(5) (failing to disclose to the tribunal a material fact knowing that the omission is reasonably certain to mislead the tribunal), and RPC 4.1(a) (in representing a client, knowingly making a false statement of material fact or law to a third person). Therefore, the DEC dismissed those charges.

For the reasons set forth below, we determine to impose a three-month suspension on respondent for both the stipulated violations, with the exception of RPC 8.4(c), and the additional

charges, which, with the exception of RPC 3.2, should not have been dismissed.

Respondent was admitted to the New Jersey bar in 1990. At the relevant times, he maintained an office for the practice of law in Bridgewater. He has no disciplinary history.

The ethics charges against respondent arose out of his representation of the defendant in a Superior Court lawsuit captioned Stephen H. Joseph v. Bay State Insurance Company, which was instituted as the result of Bay State's handling of the plaintiff's claim for damages caused by a fire at his residence. The plaintiff was represented by the grievant, Robert Feltoon, who was assisted by his associate, Jonathan Crawford. Respondent represented Bay State.

The DEC presided over a two-day hearing, during which it received testimony from respondent, his administrative assistant, Lilly Shebey,[1] Feltoon, Crawford, and respondent's character witness, attorney Jay Lavroff. The testimony established that there was a great deal of animosity between

[1] Throughout the testimony, Shebey was referred to as Lily Bekir, her surname at the time the events giving rise to this disciplinary matter took place.

Feltoon and respondent, which was manifested throughout the course of the litigation.

Before the first witness testified at the DEC hearing, respondent stipulated the allegations in counts one and two of the complaint. According to count one, at respondent's request, he and Feltoon served motions and discovery on each other and communicated with each other electronically (via email, disc, fax, and "electronic media"). Respondent stated to Feltoon that he preferred this practice, because it reduced the usage of paper.

According to the ethics complaint, in response to Feltoon's "legitimate inquiries, comments, or questions to respondent during the course of the litigation," respondent sent the following emails and fax to Feltoon on the following dates:

> "Don't feel you have to email me daily and let me know just how smart you are." (November 3, 2009 email).
>
> "This will acknowledge receipt of your numerous Emails, faxes and letters. . . . In response thereto, Bla Bla Bla Bla Bla Bla." (November 11, 2009 fax.)
>
> "Did you get beat up in school a lot?, because you whine like a little girl." (January 27, 2010 email).
>
> "Why don't you grow a pair?" (July 7, 2010 email).

> "I'd send you the delivery receipt, but I put both your email addresses in my 'Junk Mail' box, because that is all I get from you, JUNK." (Aug. 16, 2010 email)
>
> "What's that girlie email you have. Hotbox.com or something?" (Sept 28, 2010 email).
>
> [C¶10.][2]

According to the second count of the complaint, on December 16, 2010, Feltoon and respondent appeared before the Honorable Michael J. Kassel, J.S.C., to argue various motions. After the motions were heard, counsel discussed the wording of the order, in Judge Kassel's chambers. On the way out of the judge's chambers, respondent told Feltoon never to threaten him with an ethics complaint again. At the same time, physical contact between respondent and Feltoon occurred, causing Feltoon to say to respondent, "Don't touch me," or words to that effect. Respondent replied, "Why would I want to touch a fag like you?"

Both counts described respondent's conduct as discourteous and disrespectful and alleged that, by such conduct, respondent had violated RPC 3.2 and RPC 8.4 (a), (c), and (d).

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[2] "C" refers to the formal ethics complaint, dated January 30, 2012.

With respect to these charges, respondent stated the following, at the DEC hearing:

> I sent these five E-mails, I sent E-mails to Mr. Feltoon as set forth in the complaint that said don't feel you have to E-mail me daily, and "let me know just how smart you are in November." I sent an E-mail, this will acknowledge receipt of your numerous E-mails, faxes and letters. In response thereto, blah, blah, blah, blah. This is November 2009. I sent it. I sent it to him. I intentionally sent it. It was venomous. I sent the E-mail four months later, "Did you get beat up in school a lot because you whine like a little girl."
>
> My apologies to the panel for reading these, and to everybody in the room, and to the court reporter. Seven months later, "Why don't you grow a pair." The fifth one, "I'd send you a delivery receipt" -- this was both to Mr. Crawford and to Mr. Feltoon. "I'd send you a delivery receipt, but I put both your E-mail addresses in my junk mail because that's all I get from you, junk." And then, finally, in September, "What's the girlie E-mail you have, hotbox or something" with regards to problems sending E-mails.
>
> This is inexcusable. I don't have an answer. It doesn't matter. What happened before, why I sent it. It was unprofessional, it was undignified, I was wrong, it was not courteous, it was not -- and, I'm sorry, I can't remember the wording. I want to track because this, essentially, is an admission with regards to 3.2. It was not considerate. I have no explanation. I should be disciplined for it.

> Coming out of court several months -- a year later, I called, and, again, I apologize, I don't want to use the language over and over again. I called him a fag. It was the first thing that came to my mind. I have never said anything like that before, so forget about attorneys, but to people. It was not intended as a specific remark to Mr. Feltoon. It was wrong. It was horrible. All I can do is say that I'm sorry, I should have said I'm sorry earlier to Mr. Feltoon. But, as you're going to see, the end of this litigation did not end well for me. They had me removed -- Mr. Feltoon had me removed and made a witness, and that was the last of my involvement in the case.
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> [1T13-14 to 1T15-8.][3]

The third count of the complaint, which was the subject of the disciplinary hearing, alleged that, on October 15, 2010, Feltoon filed a motion seeking, in part, "an order declaring that the rent Plaintiff was then paying for temporary housing, and the cost of renting furniture for that temporary home, constituted reasonable additional living expenses as a matter of law under the homeowners policy at issue." The motion was accompanied by transmittal letters to the clerk's office and to

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[3] "1T" refers to to the transcript of the August 24, 2012 ethics hearing.

Judge Kassel, a proposed form of order, a brief, and certifications of the plaintiff and Feltoon. On that same date, Crawford served the papers via five separate emails, with attachments.

Crawford testified that, prior to sending each email, he left a voice mail message for Shebey, informing her that the motion would be served via email. Each of the emails sent to Shebey requested that she confirm receipt of both the email and the attachments. After Crawford sent each email, he faxed a letter to Shebey confirming that he had sent the emails and requesting that she immediately advise either him or Feltoon, if she had not received them. On October 19, 2010, Shebey "confirmed receipt of all five Emails sent by Crawford."

Crawford also emailed the same five emails and documents to respondent. Respondent never stated to Crawford that he did not receive them. Respondent did not object to service of the papers via email and Crawford did not receive any non-delivery notices.

Seven weeks later, respondent submitted an opposition to the plaintiff's motion, as well as a cross-motion of his own. In his brief, respondent claimed that "no certification was provided . . . with regards to this motion." At the DEC

hearing, Crawford conceded that, after respondent claimed, in his opposition papers, that he had not received the certifications, Crawford did not provide him with copies because Crawford did not believe respondent's claim, particularly in light of the multiple references to the certifications, in the brief accompanying the plaintiff's motion, and respondent's failure to ask for them. Rather, Crawford submitted to the court a reply certification, to which he had attached copies of the initial emails and faxes and the follow-up emails to respondent.

On December 16, 2010, the motion and cross-motion were argued before Judge Kassel. The plaintiff's motion was denied, based on respondent's claim that he had not received the supporting certifications providing the factual basis for the relief sought from the court and, therefore, was not able to address the contents of the certifications in his opposition. The following exchange took place before Judge Kassel:

> MR. STOLZ: Your Honor, is the -- is the inventory that Mr. Feltoon claims that he sent us part of the moving papers? Because I didn't have the certifications.
>
> . . . .
>
> MR. STOLZ: So, I don't have it. I don't know what it says, and to give me a

chance to say, no, it's no good, or it's too much. Give Bay State a chance to look at it.

THE COURT: Yeah, but did you have — did you have Mr. -- the brief prepared by Mr. Feltoon on behalf of Mr. Joseph that sought summary judgment on the issue of the furniture expenses that are now being referenced to?

MR. STOLZ: I have a brief. It's a 26 page brief, but it doesn't have an attachment for this additional furniture.

THE COURT: All right.

MR. STOLZ: And in this -- let me just see -- the certification that came -- that we had asked that be sent by regular mail, because some of their submissions were either put in the junk, or spam, or couldn't be opened, I don't see that in this submission. So, Judge, if you —

THE COURT: All right. Well —

MR. STOLZ: -- give us ten days.

THE COURT: Hold on. Hold on. Mr. Feltoon, was the -- these new furniture bills sent to Mr. Stolz by e-mail?

MR. FELTOON: They were originally sent to him by e-mail, and I asked him to respond, and he refused. He said that they -- they were not going to respond. I have a response to that.

THE COURT: Yeah.

MR. FELTOON: And then I sent the brief — I sent the certification with the brief

pursuant to an agreement I had in writing with his office, that we would agree to exchange things by e-mail?

MR. STOLZ: Which we withdrew a year ago.

MR. FELTOON: And, so, I sent the entire package to him. Your Honor has all of the e-mails, including his office's confirmation that he has them all.

As Your Honor pointed out, my brief goes on for pages talking about Mr. Joseph's certification. Mr. Stolz admits he had that brief on October 15th, and now he has the audacity for two months later to stand here and tell Your Honor he still doesn't have it.

He's never asked me for it. I've never mailed it to him. It's just outrageous that he would have my brief, which mentions Feltoon's certification, Joseph's certification, and then refused to respond by saying I don't have it, when he's never asked.

THE COURT: Well, let me ask Mr. Stolz. Mr. Stolz did you put in your opposition brief that you were concerned that you didn't have the certification -- you didn't have some certifications that detailed the furniture in question?

MR. STOLZ: I don't know what the certification -- how am I supposed to say -- I'm sorry, Judge. How am I supposed to say I don't have a certification that says this, and I don't have the certification.

THE COURT: No, but if -- if the brief that was sent makes reference to the

certification, and says that this -- these $2,400 a month in furniture is at issue, then at least you're on notice that you — that you don't have the certification that contains that information.

MR. STOLZ: Yeah. I think it's the — the first counter statement. We do not [sic] either certifications [sic].

THE COURT: Hold on. Where -- well, since the two of you have disagreed on so many things that I'm not intimately familiar with in terms of the back, and forth, where -- where is that?

MR. STOLZ: The first page of the brief.

THE COURT: Right. Yeah.

MR. STOLZ: "Plaintiff does not set forth" —

THE COURT: What — what paragraph? What —

MR. STOLZ: First paragraph.

THE COURT: "plaintiff does not set forth a statement of facts." I see that. Right. Where is there something that says you don't have the — the —

MR. STOLZ: Three.

THE COURT: -- relevant information concerning the furniture rental?

MR. STOLZ: No, Judge, I -- I didn't say I didn't have the furniture rental. I said, we don't have any certifications. And -- and I can't -- as I stand here today, I can't —

THE COURT: Well, where -- where is that?

MR. FELTOON: It's the top of Page 3, Your Honor.

MR. STOLZ: No certification in response.

THE COURT: Top of Page 3? All right.

MR. FELTOON: Point Number 4 –

THE COURT: "As in Count 7, additional living expenses. No certification provided with regards to the motion."

MR. STOLZ: Well, here, I actually did say it.

THE COURT: All right. Mr. Feltoon, it was – I'm not going to disentangle why it was the case, but it was -- it was briefed.

I'm going to order right now – I'm going to sign the order as to what Bay State previously paid on, and you can re-file as to the new amount, and it's incumbent upon Mr. Stolz to respond accordingly.

I would request that both of you send everything formally, certified mail, et cetera, et cetera.

[Ex.P5,p.132,l.14 to Ex.P5,p.137,l.5.][4]

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[4] "Ex.P5" refers to the transcript of the oral argument on December 16, 2010.

According to the ethics complaint, respondent's "representations" to the court that he had not been provided with the plaintiff's certification were "knowingly false." As to this issue, Shebey testified that, after she had opened each attachment to Feltoon's emails, she had saved it to "the K drive" on the office computer system and, it seems, placed the original in respondent's incoming mail bin and another copy directly into the file. Although Shebey could not recall the specifics of this particular motion, she testified as to her general office practice, when handling motions. It was her practice to make sure that the office had actually received attachments to emails. If something was missing, she would call the attorney who had sent it to respondent.

According to Shebey, respondent never asked her for the certifications and never told her that they were "corrupted."

At the DEC hearing, respondent stipulated that he had received the five emails from Crawford:

> I have not maintained from the opening throughout this case that I -- that my office did not get these five E-mails, that they didn't get the attachments, that the attachments were not put in the pleadings, that all five E-mails were not put in my incoming mail. I am simply saying I didn't see them, and I am saying I didn't see them because of the volume, and because of what

> was going on for those two months. Not I didn't get them. I didn't say to the court they were corrupted, I didn't get them. I said I don't have the certifications, give me ten days to look at them. That's what the transcript says.
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> [1T141-17 to 1T142-3.]

Although respondent admitted, at the ethics hearing, that he had received the certifications, he testified that he had not seen them at the time that he had sat down to prepare the opposition to the motion and the cross-motion. He maintained that he had not lied to the court.

Respondent testified that, between the time that the motion was delivered and the date of oral argument, he was often out of the office. As stated previously, the motion was served on October 15, 2010. The opposition and cross-motion were served on November 30, 2010. Respondent testified that he was in Ireland on a golf trip with his father, from October 18 to 25, 2010, and in Punta Cana with his family, from November 22 to 29, 2010. He surmised that he had not worked on the opposition and cross-motion until November 29, 2010. In addition, he testified that the plaintiff's motion was just one of ten-to-fifteen motions that required his response, all on that one day.

Respondent explained that he had not requested copies of the certifications from Crawford or Feltoon because he did not believe that the documents were "important." Instead, he "just assumed it [sic] was [sic] saying the same thing over and over again."

Respondent testified that, from December 1 to 6, 2010, he was in Palm Beach.[5] At that point, he had a trial until December 15, 2010. Therefore, he was not able to look at the plaintiff's reply brief, which included the certifications, until the night before oral argument before Judge Kassel. Moreover, he claimed, his main concern was the summary judgment motion on the plaintiff's bad faith claim against Bay State, not the claim for payment for additional expenses.

Respondent continued:

> I neglected my files, I played too much golf, I went to Punta Cana with my family all within two months. Was it wrong? I don't know. This is the lifestyle that I've chosen, the practice I've chosen because I worked at Methfessel & Werbel for 15 years in a cubical [sic] rising to managing director. I didn't want that anymore. I

[5] Later, he stated that he was in Palm Beach from December 6 to 10, 2010.

want to play golf. I do insurance work. I missed it. I screwed up. I had no motivation to lie to the judge about this particular thing.

Now, you know, I spent time here. Look, we had this agreement that he send it or don't send it, that was more to set a context as to what was going on. He had an agreement, yeah, he's going to send it by papers. And if it was sent by papers and it was scanned, as Lilly testified, by Linda Morton, that whole thing would have been in my incoming mail as opposed to just the E-mails. That's not their fault. It's my fault. That's my process. And something fell through the cracks, and I've been called on it.

. . . .

So all along, I'm maintaining that there was one E-mail with five. And, again, should I have paid attention? Of course, I should have paid attention. I should pay more attention to this. But it certainly doesn't rise to the level of a knowing misrepresentation, and I certainly didn't have any motivation to lie to the court that I didn't get this certification. Should I have done things differently? Absolutely. Did I learn a lesson about this? Absolutely. After this, and I got that I now have hired two other attorneys, they review things, I review everything that comes in. Am I going to get lazy again and play more golf? I hope so. But I certainly did not intentionally lie to Judge Kassel or intentionally lie to Mr. Feltoon.

[1T202-3 to 23; 1T205-15 to 1T206-4.]

Attorney Jay Lavroff, a personal friend and business colleague of respondent, testified as his character witness. Lavroff attested to respondent's reputation as a "scrupulously honest, straightforward, meticulous practitioner, and while a zealous advocate, someone who plays it straight." Indeed, when Lavroff served as chair of the District XII Ethics Committee, he recommended respondent to serve on that committee.

Based on respondent's admission to the allegations of counts one and two of the ethics complaint, the DEC found that he had violated RPC 3.2 and RPC 8.4(a), (c),[6] and (d).

With respect to count three of the complaint, the DEC found as follows:

> After a review of the testimony, which was exhaustive with no less than 4 witnesses testifying, it cannot be said that Mr. Stolz intentionally misrepresented a fact to the tribunal given his plausible explanation regarding the alleged statement, taken together within the context in which it was made and given the circumstances, and as

[6] The complaint does not identify which statements of respondent were dishonest, fraudulent, deceitful, or misrepresentations. Presumably, the complaint intended to encompass all of the pejorative and discriminatory comments within this charge.

defined within the meaning of RPC 3.2, 3.3 (a)(5) and 4.1(a).

23. While we acknowledge that Mr. Stolz is a sole practitioner, has a very busy schedule including various, multiple out of state trips, we do not find that this representation on a matter of additional living expenses would warrant an intentional misrepresentation. It defies logic, and appears that Mr. Stolz was perhaps sloppy, or less than diligent in retrieving or reviewing the email which his office undoubtedly received from grievant. However, what is most troubling is that the grievant and respondent clearly were not working to advance a cause in litigation, but to show the other person up through certain statements. In fact, Mr. Stolz twice represented to the Court that he did not have the Certification, once in writing and once at oral argument. There was a time lapse in between those two circumstances. However, rather that resend the Certification, Grievant sent him a confirmation sheet that it was sent. Again, it did not appear by a clear and convincing standard that an intentional misrepresentation occurred based upon the facts and testimony. Possibly neglect or lack of diligence, but not intentional misrepresentation.

[HPR§IV¶22-¶23.][7]

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[7] "HPR" refers to the hearing panel report, dated February 26, 2013.

For these reasons, the DEC recommended the imposition of an admonition on respondent.

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.

The allegations underlying the charges in the first and second counts of the complaint, which respondent admitted, clearly and convincingly establish that he violated RPC 3.2, RPC 8.4(a), and RPC 8.4(d). The sarcastic and sophomoric comments made in the emails and fax set forth in count one demonstrated a failure to treat Feltoon with "courtesy and consideration," as required by RPC 3.2. The wildly inappropriate – indeed, discriminatory – comments set forth in count two also demonstrated a lack of courtesy and consideration.

Moreover, even though respondent's behavior was confined to written communications to Feltoon only (count one) and to verbal communications outside the presence of anyone else (count two), such conduct violated RPC 8.4(d) because, as stated by the Court in In re Vincenti, 114 N.J. 275, 281-82 (1989),

> [C]onduct calculated to intimidate and distract those who, though in an adversarial position, have independent responsibilities and important roles in the effective administration of justice cannot be

> countenanced. The adversary system depends on the effectiveness of adversary counsel. Our rules of procedure are designed in large measure to bring to litigation adversaries who have an equal opportunity and comparable ability in the representation of opposing parties in order to assure a just result. Thus, the undue and extraneous oppression and harassment of participants involved in litigation can impair their effectiveness, not only as advocates for their clients, but also as officers of the court. An attorney who consciously and intentionally engages in such conduct perverts advocacy. Such conduct redounds only to the detriment of the proper administration of justice, which depends vitally on the reasonable balance between adversaries and on opposing counsels' respect, trust, and knowledge of the adversary system. There cannot be genuine respect of the adversary system without respect for the adversary, and disrespect for the adversary system bespeaks disrespect for the court and the proper administration of justice.

In that case, like here, the attorney had engaged in many acts of misconduct that had taken place, arguably, in private. However, the fact that the misconduct did not take place in a courtroom or during a proceeding or in the presence of a judge or court personnel or parties or witnesses made no difference to the Court in Vincenti. It makes no difference here as well. Respondent's conduct was a violation of RPC 8.4(d).

Because respondent's conduct was in violation of RPC 3.2 and RPC 8.4(d), it was also in violation of RPC 8.4(a).

Although respondent's inappropriate comments and behavior led to a charge of RPC 8.4(c), in counts one and two, that RPC is not really applicable, under the circumstances. Truth or falsity of the statements really is not the issue. Rather, it is the nature of those statements (offensive and discriminatory) that makes them unethical. Thus, these acts fall more properly under the RPC 3.2, RPC 8.4(a), and RPC 8.4(d) charges. Accordingly, we dismiss the RPC 8.4(c) charge as inapplicable.

As to count three, we are unable to agree with the DEC's finding that there is no clear and convincing evidence that respondent knowingly made a false statement of material fact to either Judge Kassel (RPC 3.3(a)(1)) or to Feltoon (RPC 4.1(a)). The same is true of the charge that respondent has failed to disclose a material fact to the judge (RPC 3.3(a)(5)).

With the exception of RPC 3.2, and contrary to the DEC's finding, the clear and convincing evidence establishes that respondent violated the RPCs charged in the third count of the complaint. Specifically, respondent testified that he was frequently out of the office at critical times and for extended periods, between service of the motion and the preparation and service of his client's opposition and cross-motion, and then, again, in the days between plaintiff's reply brief and oral

argument. Nevertheless, when respondent answered Judge Kassel's questions about his knowledge of the certifications, respondent never stated that he was out of the office and, therefore, may have overlooked them. Rather, he insisted, at oral argument, that "[n]o certification [was] provided" to him or that he did not "have" it. He requested that the judge grant him ten days to give his client "a chance to look at it."

Although it may be true, as the DEC observed, that respondent had no reason to lie about the non-receipt of the certifications, his actions were so contrary to what a reasonable attorney would have done, if confronted with the same situation, that his story cannot be believed. What attorney would read both a motion, asking that the court order his client to pay money, and a supporting brief, stating that certifications were attached, and not do anything to either find or obtain the certifications before proceeding to prepare written opposition to that motion? Yet, even in the face of Feltoon's reply to respondent's opposition, which expressly stated that the certifications were, in fact, sent to respondent and received by his office, respondent made no effort to locate them.

He did not ask his secretary about the missing certifications. He did not look for them, either in the firm's "K" drive or in the file. He did not request the adjournment of the motion, which, admittedly, was likely impossible at the eleventh hour. Instead, respondent simply did without the certifications, "assum[ing]" that the plaintiff was "saying the same thing over and over again."

Moreover, how was respondent even able to submit opposition to the motion if he was unaware of the basis for the relief, which would have been set forth in the certifications? In our view, he was indeed able to prepare written opposition because he did have the certifications. He just did not have enough time to devote sufficient attention to the matter, given his multiple vacations and the multiple motions (ten to fifteen, by his estimation) that required a response on the same day as that in the Joseph case. So, he did what he could and decided to get more time by claiming that he did not receive any certifications.

In short, respondent's behavior could not have been the result of either inexperience or ineptitude. Based on the above, the record clearly and convincingly establishes that respondent lied to the court and to Feltoon about the missing

certifications, a violation of RPC 3.3(a)(1), RPC 3.3(a)(5), and RPC 4.1(a). However, the record does not support a finding that, by seeking to gain more time to reply to the motion, respondent intended also to delay the litigation. Thus, the RPC 3.2 charge must be dismissed.

There remains for determination the appropriate measure of discipline to be imposed for respondent's violations of RPC 3.2 (in two contexts), RPC 3.3(a)(1), RPC 3.3(a)(5), RPC 4.1(a), RPC 8.4(a), and RPC 8.4(d).

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 charges 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 had been reprimanded on two prior occasions); In re Supino, 182 N.J. 530 (2005) (attorney suspended for three months after he 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); In re Van Syoc, ___ N.J. ___ (2014) (six-month suspension

imposed on attorney who, during a deposition, called opposing counsel "stupid" and a "bush league lawyer;" the attorney also impugned the integrity of the trial judge, by stating that he was in the defense's pocket, a violation of RPC 8.2(a); we noted several aggravating factors, that is, the attorney's disciplinary history, which included an admonition and a reprimand; the absence of remorse; and the fact that his 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); 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 this case, respondent's conduct toward Feltoon ranged from childish to outrageous. It was not confined to a single incident but, rather, took place over the course of more than a

year. In addition, respondent's conduct grew increasingly hostile, as time went on. It is true that he expressed a modicum of remorse and contrition to the DEC for his behavior toward Feltoon. Nevertheless, as the presenter pointed out at oral argument before us, not once, before the disciplinary hearing, did respondent acknowledge his wrongdoing or show repentance therefor. As the presenter remarked,

> The panel below, as part of the mitigating circumstances, did indicate that the respondent showed contrition. Which is true. He, did show contrition, at the hearing. If you look at the record in response to the grievance that was filed against him, respondent was very combative. In fact, his position was that he did not see any sort of ethics violation in the conduct exhibited by him toward the grievant. I think he should get some credit for showing contrition at the hearing, but I don't know if he should get full credit, only because he didn't show ready contrition. It would be different if, during the course of the investigation, he came back and said, 'You know what, I'm sorry.' I think that would weigh a little more heavily in terms of a mitigating factor. He should get some credit, but I don't think he is entitled to full credit because of that.
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> [Transcript of oral argument before the Disciplinary Review Board, January 16, 2014, in In the Matter of Jared E. Stolz, DRB 13-331 (emphasis supplied).]

We, too noted that respondent's apologies surfaced only at the disciplinary hearing. In our view, the presenter was generous in suggesting that respondent should be given some credit for his admission of culpability to the hearing panel. As we observed in In the Matter of Steven Siegel, DRB 92-247 (January 28, 1993) (slip op. at 16), "[i]t was only after respondent had the misfortune of being apprehended that he showed contrition . . . ." In an earlier case, the Court also alluded to an attorney's belated mea culpa:

> Although respondent now admits his wrongdoing and professes contrition therefor, it cannot be overlooked that this realization is all too recent . . . . [H]is newfound remorse surfaced only when it was clear that he would be found guilty of much if not all the charged professional misconduct and would consequently face a stern sanction.
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> [In re Stier, 112 N.J. 22, 25 (1988).]

Attorneys who make material misrepresentations of fact to the court and to their adversaries are subject to discipline ranging from an admonition to a suspension. See, e.g., In the Matter of Robin Kay Lord, DRB 01-250 (September 24, 2001) (admonition for attorney who failed to reveal her client's real name to a municipal court judge when her client appeared in court using an alias, thus resulting in a lower sentence because the

court was not aware of the client's significant history of motor vehicle infractions; in mitigation, the attorney disclosed her client's real name to the municipal court the day after the court appearance, whereupon the sentence was vacated); In re Mazeau, 122 N.J. 244 (1991) (reprimand for attorney who failed to disclose to a court his representation of a client in a prior lawsuit, where that representation would have been a factor in the court's ruling on the attorney's motion to file a late notice of tort claim); In re Whitmore, 117 N.J. 472 (1990) (reprimand for attorney/municipal prosecutor who failed to disclose to the court that a police officer whose testimony was critical to the prosecution of a drunk-driving case intentionally left the courtroom before the case was called, resulting in the dismissal of the charge); In re Chasar, 182 N.J. 459 (2005) (three-month suspension for attorney who, in her own divorce proceedings, filed with the court a false certification in which she denied having made cash payments to her employees; she also filed a certification on behalf of her secretary, in which the secretary falsely claimed not to have received cash payments; the attorney, who had no prior discipline, violated RPC 3.3(a)(1), RPC 3.3(a)(4), RPC 4.1(a), and RPC 8.4(c)); In re D'Arienzo, 157 N.J. 32 (1999) (three-month suspension for attorney who made a series

of misrepresentations to a municipal court judge to explain his repeated tardiness and failure to appear at hearings; we noted that, if not for mitigating factors, the discipline would have been much harsher); In re Mark, 132 N.J. 268 (1993) (three-month suspension for attorney who misrepresented to a court that his adversary had been supplied with an expert's report and, in support of that statement, fabricated two transmittal letters; in mitigation, the attorney was not aware that his statement was untrue, given the firm's operating procedures, and, in addition, he was under considerable stress from assuming the caseload of three attorneys who had recently left the firm); In re Kernan, 118 N.J. 361 (1990) (three-month suspension for attorney who failed to inform the court, in his own matrimonial matter, that he had transferred property to his mother for no consideration, and for failure to amend his certification listing his assets; the attorney had a prior private reprimand); In re Johnson, 102 N.J. 504 (1986) (three-month suspension for attorney's misrepresentation to a judge that his associate was ill so that the attorney could get an adjournment); In re Forrest, 158 N.J. 429 (1999) (six-month suspension imposed on attorney who, in connection with a personal injury action involving injured spouses, failed to disclose the death of one of his clients to

the court, to his adversary, and to an arbitrator, and advised the surviving spouse not to voluntarily reveal the death; the attorney's motive was to obtain a personal injury settlement); In re Telson, 138 N.J. 47 (1994) (six-month suspension for attorney who concealed a judge's docket entry dismissing his client's divorce complaint, obtained a divorce judgment from another judge without disclosing that the first judge had denied the request, and denied his conduct to a third judge, only to admit to this judge one week later that he had lied because he was scared); In re Cillo, 155 N.J. 599 (1998) (one-year suspension for attorney who, after misrepresenting to a judge that a case had been settled and that no other attorney would be appearing for a conference, obtained a judge's signature on an order dismissing the action and disbursing all escrow funds to his client; the attorney knew that at least one other lawyer would be appearing at the conference and that a trust agreement required that at least $500,000 of the escrow funds remain in reserve); and In re Kornreich, 149 N.J. 346 (1997) (three-year suspension for attorney who, after being involved in an automobile accident, misrepresented to the police, her lawyer, and a municipal court judge that her babysitter had been

operating her vehicle and who presented false evidence in an attempt to falsely accuse another of her own wrongdoing).

Although none of these cases are really on point, the nature of respondent's conduct is closest to that of the attorney in Johnson. There, the attorney lied about his associate's poor health in order to obtain an adjournment. Here, respondent lied about the non-receipt of the certifications in order to obtain the equivalent of an adjournment. The attorney in Johnson received a three-month suspension for his misconduct. We note, however, that that case was decided in 1986, which was six years before the Court created censure as a form of discipline, in 2002. R. 1:20-15. Thus, were Johnson before us and the Court after July 2002, he might have received a censure.

Here, given the totality of respondent's misconduct, that is, his insulting remarks to Feltoon, in writing and in person, his misrepresentations to Feltoon and to Judge Kassel with respect to his "non-receipt" of the certifications, and the obvious lack of early recognition of and regret for his actions, we determine a three-month suspension is the appropriate measure of discipline for this respondent.

Members Gallipoli and Zmirich voted to impose a six-month suspension. Member Doremus did not participate.

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 Jared E. Stolz
Docket No. DRB 13-331

Argued: January 16, 2014

Decided: March 18, 2014

Disposition: Three-month suspension

Members	Disbar	Three-month Suspension	Six-month Suspension	Dismiss	Disqualified	Did not participate
Frost		X				
Baugh		X				
Clark		X				
Doremus						X
Gallipoli			X			
Hoberman		X				
Singer		X				
Yamner		X				
Zmirich			X			
Total:		6	2			1

Isabel Frank
Acting Chief Counsel