Supreme Court of New Jersey
Disciplinary Review Board
Docket No. DRB 20-304
District Docket Nos. XIV-2019-0185E
and XIV-2019-0244E

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

Decision

Decided: August 3, 2021

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

This matter was before us on a certification of the record filed by the Office of Attorney Ethics (the OAE), pursuant to R. 1:20-4(f). The formal ethics complaint charged respondent with having violated RPC 3.2 (two instances – failure to treat all persons involved in the legal process with courtesy and consideration); RPC 3.5(c) (two instances – conduct intended to disrupt a

tribunal); RPC 8.2(a) (two instances – statement made with reckless disregard for the truth or falsity thereof concerning the qualifications of a judge); RPC 8.1(b) (failure to cooperate with disciplinary authorities);[1] and RPC 8.4(d) (two instances – conduct prejudicial to the administration of justice).

On January 20, 2021, the Office of Board Counsel (the OBC) received from respondent a "certified objection to the Form of Order submitted by Ryan Moriarty on the authority of the Office of Attorney Ethics," which we elected to treat as a motion to vacate the default (MVD). On February 22, 2021, we denied respondent's MVD via letter decision.

For the reasons set forth below, we now determine to impose a censure, with a condition.

Respondent was admitted to the New Jersey bar in 2011 and to the New York bar in 2012. At the relevant times, he maintained an office for the practice of law in Waldwick, New Jersey. He has no prior final discipline in New Jersey. However, effective July 27, 2021, the Court temporarily suspended respondent

[1] As detailed below, although respondent filed an answer to the formal ethics complaint, the hearing panel chair ultimately struck the answer for failure to comply with R. 1:20-4(e) and permitted the matter to proceed as a default.

for his failure to cooperate in the OAE's investigation of another matter. In re Cubby, ___ N.J. ___ (2021).

On February 7, 2020, the OAE sent a copy of the formal ethics complaint, by certified and regular mail, to respondent's office address of record. The record does not contain any information regarding whether respondent accepted the certified mail or whether the regular mail was returned.

On March 12, 2020, the OAE sent another letter to respondent, by e-mail and regular mail, at his addresses of record, informing him that, unless he filed a verified answer to the complaint within five days of the date of the letter, the allegations of the complaint would be deemed admitted, the record would be certified to us for the imposition of discipline, and the complaint would be deemed amended to charge a willful violation of RPC 8.1(b). The record does not contain any information regarding whether the regular mail was returned to the OAE.

On March 16, 2020, respondent mailed a draft answer to the OAE, stating that he was not filing it at that time but, rather, was reserving his right to revise it as he deemed necessary, and demanding both that the complaint be withdrawn and that a hearing take place "prior to any further action being taken by this body or any other disciplinary body." The next day, the OAE informed

respondent that it would not dismiss the complaint, that he was required to file a conforming answer, and that, after he had done so, he could file a formal motion to dismiss the complaint.

On March 17, 2020, by way of letter to the Director of the OAE, Charles Centinaro, respondent filed an unverified answer. In the letter, he complained of what he described as the OAE's "sham investigation" and Deputy Ethics Counsel Ryan J. Moriarty's "false claim" that he is the arbiter of whether respondent's answer "conforms with relevant legal authority."

On March 31, 2020, the OAE again informed respondent that his answer did not comply with R. 1:20-4(e) and the principles set forth in In re Gavel, 22 N.J. 248, 263 (1956). Based on our review of the record, respondent neither replied to the letter nor submitted a conforming answer to the OAE, and the matter was assigned to a hearing panel of the District IIA Ethics Committee, with Alexander H. Carver, III, J.S.C. (Ret.), acting as chair.

On August 11, 2020, the OAE filed a motion to strike respondent's answer to the formal ethics complaint and to treat the matter as a default, pursuant to R. 1:20-4(f) and R. 1:20-5(c). In the motion, the OAE argued that respondent's answer failed to comply with R. 1:20-4(e) (requiring a verified answer to set forth, among other things, "a full, candid, and complete disclosure of all facts

reasonably within the scope of the formal complaint"). Respondent neither filed written opposition to the motion nor requested oral argument.

Consequently, on October 26, 2020, Judge Carver issued an order striking respondent's answer and permitting the matter to proceed to us as a default, pursuant to R. 1:20-4(f).

As stated previously, respondent filed what he characterized as a "certified objection to the Form of Order submitted by Ryan Moriarty on the authority of the Office of Attorney Ethics," which we determined to treat as an MVD. The OAE filed opposition, and respondent submitted a reply brief.

To succeed on a motion to vacate, a respondent must (1) offer a reasonable explanation for the failure to answer the ethics complaint and (2) assert a meritorious defense to the underlying charges. In this matter, we determined that respondent failed to satisfy either prong.

Generally, respondent argued that he had not been provided with the complete record in this matter; that Moriarty's certification omitted "all of [Moriarty's] wrongdoing and anything that could be offered in [respondent's] defense;" that Moriarty failed to include a copy of respondent's answer; and that the certification was a fraud on the court, because it created the impression that respondent did not cooperate with the investigation and would not amend his

answer, "when in fact Mr. Moriarty never provided a basis for striking it." According to respondent, despite the applicable Court Rules, we cannot adjudicate his matter based solely on the default documents, without a hearing.

Specifically, respondent attacked the OAE's pre-complaint procedures, claiming that no grievance was filed; asserted that attorney Richard Blender's allegations were unworthy of belief, and that he is a bad actor; claimed that the judges under Judge Caposela's supervision did not carry out "their legally mandated functions;" charged that the OAE forced him to attend an interview during which the OAE "continued to refuse to substantiate the charges of misconduct" against him; alleged that a transcript was created for the sole purpose of allowing us to impose discipline without a hearing; complained that Moriarty only took notes of his interviews of other witnesses, rather than recording them; and contended that the OAE has prosecuted him primarily based on the hearsay statements of others.

Respondent further argued that the ethics complaint was "improperly pled, entirely deficient, and based entirely on inadmissible hearsay statements and false representations made by individuals whom respondent had previously accused of misconduct." He then proceeded to attack Moriarty's and the OAE's competence, professionalism, and character. For example, according to

respondent, Moriarty intentionally filed a deficient complaint, knowing that respondent could not file a motion to dismiss until after the case had been presented, which respondent characterized as an abuse of his office and a denial of due process. Respondent further asserted that the OAE is persecuting him "for attacking corruption in a city with a reputation for corruption," and that the OAE's investigation "has only served to protect parties believed to be actively engaging in misappropriating government funds in Passaic County, [all] while ignoring professional responsibility to report such misconduct." In respondent's view, Moriarty either is embroiled in "assisting other unlawful actors in state and county government to fraudulently transfer tens of millions of dollars in public assets to private hands without just compensation to the cities, counties and related entities that own them," or he is incompetent and "has abused his office to conceal his ineptitude."

Next, respondent argued that Judge Carver was either a party to Moriarty's unlawful conduct or simply wanted to "move [respondent's matter] off his docket." Respondent then contended that Judge Carver "colluded" with Moriarty to strike respondent's answer, without consideration by the full hearing panel, "as provided in court rules;" that Judge Carver knew there was no Court Rule permitting him to strike the answer; that he was unable to explain how

respondent could provide "additional facts" in answering a complaint that was "clearly grabbing at straws and failed to state a claim;" that Judge Carver "actively assisted Moriarty in hiding other minor issues of misconduct" and was aware that Moriarty had "held" his answer for more than forty-five days without a hearing, "in direct violation of court rules;" that Judge Carver held hearings on the issue of striking the answer without notice to respondent; that Moriarty provided no legal authority for striking the answer; that Judge Carver has refused to provide written findings of fact; and that Judge Carver initially disagreed that the answer was deficient, but then changed his mind. Consistent with respondent's claims of corruption or incompetence, he concluded by stating that Judge Carver either had relationships with the judges whom respondent has accused of corruption, he was "too busy, too lazy or disinterested," or "has intentionally rendered an incomplete decision that has caused great harm."

Respondent also claimed that we failed to provide him with notice of our February session, have either refused or been unable to correct or withdraw false statements of law or fact, and are under the mistaken belief that the "facially sufficient certification of default is the controlling document in this matter." Here, respondent targeted the OBC, alleging it had falsely claimed that he had not filed an answer in this matter and had threatened him with additional

discipline. He criticized the OBC for suggesting that he file a motion to vacate, which he characterized as "unsolicited and bad legal advice, but likely a direct attempt to get [him] to assist in [the] falsification of the record." He complained that the OBC refused to inform him of what comprises the record. He asserted that we have been provided "with sufficient allegations of retaliation by the State of New Jersey through which any rational person would dismiss this matter out of hand." According to respondent, we must review the matter de novo, rather than require him to file further submissions.

Finally, respondent asserted that we have failed to provide "complete notice" of these proceedings, which "may indicate a willingness to rubber stamp Moriarty's petition based on Moriarty's false representations of the record." According to respondent, the OAE has deliberately attempted to schedule this matter to conflict with his other legal obligations, in other jurisdictions. He claimed that the OBC is attempting to "have this matter rubber stamped for discipline while allowing [the Board] to avoid accountability." He suggested that former Chief Counsel Ellen A. Brodsky scheduled this matter in conjunction with her retirement so that she and her successor, Chief Counsel Johanna Barba Jones, could "later claim the other's errors in defense."

In opposition to respondent's motion, the OAE emphasized that both the OAE and Judge Carver provided respondent with numerous opportunities to cure the deficiencies in his answer, but he refused to do so. Further, the OAE noted that respondent not only failed to assert meritorious defenses in his answer, but also failed to assert any defenses in his motion.

In respondent's reply brief, he simply reiterated the same arguments made in his initial motion, which we treated as an MVD.

As to the first prong of the MVD test, respondent failed to offer a reasonable explanation for his failure to file a conforming answer to the ethics complaint. Instead, he engaged in unsupported attacks against the OAE and its procedures; the witnesses; Judge Carver; the OBC; and us. His answer is replete with paragraphs that are simply "denied" and claims that other paragraphs "consist[] of unsubstantiated legal conclusions and do[] not warrant a response."

As we observed in In the Matter of Saleemah Malikah Brown, DRB 16-339 (May 31, 2017) (slip op. at 10), "R. 1:20-4(e) requires the answer to a formal ethics complaint to set forth, among other things, 'a full, candid, and complete disclosure of all facts reasonably within the scope of the formal complaint.'" Thus, an answer that simply denies an allegation is insufficient. Ibid.; In re Brown, 231 N.J. 166 (2017).

In In the Matter of Peter Jonathan Cresci, DRB 17-270 (October 23, 2017) (slip op. at 1), we determined that the OAE may not deem an attorney to be in default because his or her answer fails to comply with In re Gavel, 22 N.J. 248 (1956), and R. 1:20-4(e). Rather, the more appropriate course of action is to assign the matter to a special master or a hearing panel, who may schedule a prehearing conference where the sufficiency of both the OAE's complaint and the attorney's answer may be addressed and possible sanctions for non-compliance with any pre-hearing orders may be imposed. Id. at 2. If the special master or hearing panel determines that the attorney should file a more compliant answer but the attorney fails to do so, the factfinder may then suppress the answer pursuant to R. 1:20-5(c). Ibid. If the special master or hearing panel strikes the answer as non-compliant with In re Gavel and R. 1:20-4(e), the matter may then be certified to us as a default. In the Matters of Peter Jonathan Cresci, DRB 18-124 and 18-196 (December 12, 2018) (slip op. at 24).

In this case, the OAE and Judge Carver followed the procedure established in the Cresci cases. On February 7, 2020, the OAE served the complaint on respondent. On March 16, 2020, respondent submitted a "draft" answer, but asserted that he was not filing it "at this time."

On March 17, 2020, Moriarty informed respondent that his answer was insufficient and provided him with detailed instructions for drafting an answer. That day, respondent submitted a "revised answer." On March 31, 2020, Moriarty informed respondent that his revised answer was non-compliant with In re Gavel and R. 1:20-4(e).

In the OAE's prehearing report, dated July 6, 2020, Moriarty raised the issue of respondent's non-conforming answer and requested that the hearing panel chair direct respondent to file a conforming answer. The issue was addressed at the July 10, 2020 prehearing conference. Judge Carver requested certain information, and a second conference was held on July 27, 2020. Judge Carver stated that he would review all the documents exchanged between the OAE and respondent regarding the answer and determine whether respondent's answer complied with In re Gavel and R. 1:20-4(e).

On July 27, 2020, Moriarty wrote a letter to Judge Carver, detailing his attempts to procure a conforming answer from respondent and requesting that, in the event that the judge deemed the answer non-conforming and respondent failed to file an amended answer, the answer be stricken. By letter dated August 11, 2020, Judge Carver set a briefing schedule and scheduled the matter for

September 2, 2020. Respondent failed to file opposition or to request oral argument.

On October 26, 2020, Judge Carver entered an order, finding that respondent had refused to bring his answer into compliance with In re Gavel, In re Brown, and R. 1:20-4(e), despite having been "afforded repeated opportunities" to do so. Accordingly, the judge ordered respondent's answer be stricken and the matter to proceed to us as a default, in accordance with R. 1:20-4(f).

Proper procedure was followed below. This matter was reported to the OAE via a judge's referral. Respondent's answer was stricken as deficient, and the matter proceeded to us as a default. Respondent has failed to offer a reasonable explanation for failing to comply with the repeated opportunities afforded him to submit a conforming answer.

As to the second prong of the MVD test, respondent also has failed to assert a meritorious defense to the underlying charges. His motion to vacate merely attacks those involved in the allegations against him rather than focusing on why those allegations are insufficient to establish misconduct on his part. Respondent, thus, also failed to satisfy prong two of the MVD test.

Accordingly, we determined to deny respondent's MVD and issued a letter decision to that effect on February 22, 2021.

Moving to our review of the record, respondent's failure to file an answer to the complaint is deemed an admission that the allegations are true and that they provide a sufficient basis for the imposition of discipline. R. 1:20-4(f)(1).

COUNT ONE (XIV-2019-0185E)

Prior to March 19, 2019, Fabian Alexandria, LLC, instituted a landlord-tenant action against respondent, alleging that he had failed to pay rent as required. Richard Blender, Esq. represented the landlord, and respondent proceeded pro se.

On March 19, 2019, the landlord-tenant matter was scheduled for trial before the Honorable Vicki A. Citrino, J.S.C. Judge Citrino directed the parties to proceed to mediation. Respondent, Blender, and the landlord's representative, Elizabeth Cruz, met with Andrew DeAvila, a law clerk and trained mediator.

When the parties presented their respective positions to DeAvila, respondent objected to Blender's characterization of the matter as a non-payment of rent case because, he claimed, he was withholding rent due to the landlord's violation of the City of Paterson Rent Control Act. Blender countered

that the building was exempt from rent control. Respondent demanded proof, which Blender did not provide.

As the mediation continued, respondent grew loud and aggressive, repeatedly interrupted Blender's arguments, and became incensed. Blender suggested that the mediation be terminated and the matter proceed to trial. Respondent shouted at Blender and called him a "scumbag" for representing landlords. Blender told respondent not to speak to him that way, at which point respondent approached him in a confrontational manner, requiring DeAvila to intervene. Blender and Cruz then left the mediation session.

The parties returned to Judge Citrino's courtroom. When their case was called, respondent stated his intention to make an oral motion to remove the matter to the Law Division, so that discovery could be conducted. After counsel argued their positions, Judge Citrino informed respondent that he could file the motion, provided that, by the end of the day, he deposited with the court the $4,850 in alleged rent due, plus other charges.

Respondent refused to deposit funds with the court and requested leave to file an interlocutory appeal. Judge Citrino granted the request but declined to stay the matter pending the appeal. Frustrated, respondent stated:

> I – I'm tired of seeing these – these eviction mills running through these courts, Your Honor, and they are

> permitted to operate without [sic] impunity, it's – it's too much. There's – it's gotta stop. That's it.
>
> [Ex.6,p.15:24 to 16:3][2]

After Judge Citrino confirmed that respondent would not be depositing funds with the court, respondent interrupted and requested that she cite the legal authority for requiring him to do so as a condition to proceeding to the Law Division.[3] Judge Citrino asked respondent if he wished to proceed to trial. He answered no, stated that he wanted to proceed with the oral motion, and, again, requested legal authority for the denial of his request for a change of venue.

Respondent repeatedly demanded that the judge provide him with legal authority and interrupted the judge, before stating, "[e]nter whatever you want. I'm done."

Judge Citrino asked respondent to cite the Court Rule pursuant to which he was making his oral motion. He continued to interrupt the judge and failed to cite a Rule. The court, thus, denied the motion, again, and stated that the case would proceed to trial on the issue of nonpayment of rent. Respondent replied:

> I'm not – I'm not gonna try this, I'm not – I'm done. (Indiscernible) your order, do whatever you want to do.

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[2] "Ex." Refers to the exhibits attached the formal ethics complaint, dated January 28, 2020. "C" refers to the body of that complaint.

[3] R. 6:4-1(g) permits the court to require security for payment of rent pending disposition of a motion to transfer venue.

> I – in protest I'm not – I'm not gonna sit here for another sham trial in [sic] landlord/tenant case like I ran into with Judge Brogan, ambushed (indiscernible) order to show cause, which you refused to even give a stay for appeal on. I'm done. Do whatever you want. Enter the order.
>
> [C¶54;Ex.6,p.25,l.3 to 11.]

Consequently, Judge Citrino declared the case a voluntary default, which respondent disputed prior to leaving the courtroom.

During respondent's April 11, 2019 demand interview, he admitted raising his voice during the mediation and calling Blender a "scumbag."

Based on the above facts, count one of the ethics complaint charged respondent with having violated RPC 3.2 by continually interrupting Blender during mediation and calling him a scumbag; RPC 3.5(c) by repeatedly interjecting and speaking over Judge Citrino during the hearing and leaving the courtroom when told the matter would proceed to trial; and RPC 8.4(d) by repeatedly interrupting the proceeding; refusing to abide by Judge Citrino's rulings and instructions; calling the trial a "sham;" and leaving the courtroom when informed that the matter would proceed to trial.

COUNT TWO (XIV-2019-0244E)

On April 4, 2019, the Appellate Division granted respondent's application for permission to file an emergent motion and stayed the execution of the landlord's warrant of removal pending further order of the court. On April 12, 2019, a two-judge panel of the Appellate Division granted respondent's emergent motion to stay the eviction. The court also granted respondent leave to file a motion to transfer the landlord-tenant matter to the Law Division, provided that he deposited with the court $6,000, representing six months' unpaid rent, at which point the stay of eviction would remain in place until further order. If he failed to comply with that provision of the order, the stay would be lifted, and a warrant of removal would be issued.

On April 16, 2019, respondent wrote a letter to the two-judge panel, commenting on its April 12 decision and the submissions of Judge Citrino and Blender submitted prior to its entry. By way of e-mail dated April 24, 2019, an Appellate Division attorney informed respondent that the matter was no longer before the court.

On May 1, 2019, respondent sent an e-mail to the attorney informing her that the trial court had denied his motion to transfer the matter to the Law Division. She replied that, if he disagreed with the trial court's decision, he

could file an appeal. By way of e-mail sent a few minutes later, respondent stated:

> Sure I can pay $500 to try and enforce your poorly researched and vaguely worded decision. The appellate division has either dropped the ball or is in on the scam.
>
> [C¶68;Ex.2.]

Based on the above facts, count two of the ethics complaint charged respondent with having violated RPC 8.2(a) by making his comment to the Appellate Division attorney.

COUNT THREE (XIV-2019-0185E)

Respondent represented the defendant in a Chancery Division matter captioned Bascom Corporation v. Paterson Coalition for Housing (the Bascom matter). On March 27, 2019, respondent appeared before the Honorable Randal C. Chiocca, P.J.Ch., for oral argument on two motions – one to set aside a sheriff's sale and vacate the final judgment (filed by respondent), and the other to discharge a lis pendens.

Following argument on the motions, Judge Chiocca issued a decision from the bench. He denied the first motion on the ground that the defendant had knowledge of the lawsuit, at which point respondent stated that a witness was

available to testify in respect of service. When the judge attempted to continue with his bench decision, respondent repeatedly interrupted him. Finally, Judge Chiocca informed respondent that, if he continued to interrupt the proceeding, he would be asked to leave the courtroom.

When Judge Chiocca described one of respondent's arguments as "sheer speculation and innuendo," respondent interrupted, stating "[u]nbelievable." The sheriff's officer directed him not to interrupt. When the judge tried to regain control of the proceeding, respondent stated:

> I have a hard time controlling myself when I see the law being distorted to benefit parties that did wrong. I have a very big problem with that and I will continue to do so.
>
> [C,3C,¶¶80-81;Ex.9,p.73, l.1 - 5.]

Again, Judge Chiocca tried to regain control, telling respondent to sit down and listen or to leave the courtroom. Respondent retorted:

> Your decision – your decision – is extrajudicial. There's nothing here – it's not based on anything.
>
> * * *
>
> Nothing about (indiscernible) and now we'll have to appeal against – against these clowns, based on absolutely nothing –
>
> * * *

– whatsoever.

[C,3C,¶¶83-84;Ex.9,p.73,ll.9-11,19-24.]

Again, Judge Chiocca told respondent to stop interrupting or leave.

Upon conclusion of Judge Chiocca's bench decision, respondent requested clarification. The judge replied that the findings were reflected in the record. Unsatisfied, respondent continued to interrupt and to speak over Judge Chiocca. When the judge prepared to leave the bench, respondent stated: "[y]eah. My point is you're corrupt. That's my point."

Based on the above allegations, count three of the ethics complaint charged respondent with having violated RPC 3.2 by calling opposing counsel "clowns;" RPC 3.5(c) by repeatedly interrupting Judge Chiocca's bench decision, contrary to the instructions of the judge and the sheriff's officer, and by calling the judge "corrupt;" RPC 8.2(a) by stating that Judge Chiocca's decision was "extrajudicial" and calling him "corrupt;" and RPC 8.4(d) by continually interrupting Judge Chiocca, referring to his decision as "extrajudicial," and calling him "corrupt."

Although the ethics complaint highlighted many statements of respondent in support of the charges lodged against him, a review of the transcripts reveals even more. For example, in his pro se landlord-tenant matter, respondent

accused Judge Citrino of "trying to wrap the facts around the law, rather than let the facts speak for themselves," and, similarly, "trying to twist the facts around this thing instead of – instead of actually applying – the law."

In the Bascom matter, respondent demonstrated an inability to control his outbursts, as evidenced by the following extended excerpt from the transcript:

> MR. CUBBY: Unbelievable. Unbelievable. You're – we're just going to –
>
> UNIDENTIFIED SPEAKER: Sir, sir.
>
> MR. CUBBY: We're just going to maneuver –
>
> UNIDENTIFIED SPEAKER: The judge is making a decision, and then –
>
> MR. CUBBY: I would like to reflect for the record that the Passaic County sheriff's officer has twice come over to this counter while I – sitting down, well under control, to threaten me for speaking against what the judge is putting on the record.
>
> UNIDENTIFIED SPEAKER: (Indiscernible).
>
> MR. CUBBY: I disagree, officer. I believe you have walked over here twice now –
>
> JUDGE CHIOCCA: All right.
>
> MR. CUBBY: -- to prevent me from speaking on the record in this matter. Twice.
>
> JUDGE CHIOCCA: Mr. Cubby –

> UNIDENTIFIED SPEAKER: Sir.
>
> JUDGE CHIOCCA: -- please control yourself.
>
> UNIDENTIFIED SPEAKER: Counsel.
>
> JUDGE CHIOCCA: The officer is charged with –
>
> MR. CUBBY: I have a hard time controlling myself when I see the law being distorted to benefit parties that did wrong. I have a very big problem with that and I will continue to do so.
>
> JUDGE CHIOCCA: Either you can sit there and listen to my decision or you can leave, Mr. Cubby.
>
> [Ex.9,p.71,l.25 to Ex.9,p.73,l.8.]

At this point, respondent told Judge Chiocca that his decision was extrajudicial, and the "dialogue" proceeded as described above.

We find that the facts recited in the complaint support all the charges of unethical conduct. Respondent's failure to file an answer to the complaint is deemed an admission that the allegations are true and that they provide a sufficient basis for the imposition of discipline. R. 1:20-4(f)(1).

RPC 3.2 requires a lawyer to treat with courtesy and consideration all persons involved in the legal process. Respondent violated this Rule in his pro se landlord-tenant matter by continually interrupting Blender during the

mediation and calling him a "scumbag." He also violated the Rule in the Bascom matter by referring to opposing counsel as "clowns."

RPC 3.5(c) prohibits a lawyer from engaging in conduct intended to disrupt a tribunal. As alleged, respondent violated this Rule in both court matters, by repeatedly interrupting Judges Citrino and Chiocca. He further violated the Rule in his pro se landlord-tenant matter by speaking over Judge Citrino during the hearing, calling her "corrupt," and leaving the courtroom when she stated that the matter would proceed to trial. Finally, in the Bascom matter, respondent disrupted the tribunal by continuing to interrupt Judge Chiocca in disregard of both the judge's and the sheriff's officer's repeated instructions to refrain from doing so.

Among other things, RPC 8.2(a) prohibits a lawyer from making a statement that he or she knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications of a judge. Respondent violated this Rule in his pro se landlord-tenant matter by claiming that the Appellate Division "either dropped the ball or is in on the scam." In the Bascom matter, he violated the Rule by referring to Judge Chiocca as "corrupt" and characterizing his bench decision as "extrajudicial."

Finally, in his pro se landlord-tenant matter, respondent engaged in conduct prejudicial to the administration of justice, contrary to RPC 8.4(d), by repeatedly interrupting the proceeding, refusing to accept Judge Citrino's rulings, ignoring her instructions, and leaving the courtroom after she stated that the matter was proceeding to trial. In the Bascom matter, he violated the Rule by repeatedly interrupting Judge Chiocca while he delivered his bench decision, characterizing the decision as "extrajudicial," and calling the judge "corrupt."

Finally, respondent failed to file a conforming answer in this matter, a violation of RPC 8.1(b).

In sum, we find that respondent violated RPC 3.2 (two instances); RPC 3.5(c) (two instances); RPC 8.1(b); RPC 8.2(a) (two instances); and RPC 8.4(d) (two instances). There remains for determination the appropriate measure of discipline to impose on respondent for his ethics infractions.

Attorneys who have engaged in conduct similar to respondent, by displaying disrespectful or insulting conduct to persons involved in the legal process, including judges, in violation of the same or similar RPCs charged here, are subject to a broad spectrum of discipline, ranging from an admonition to a term of suspension. See, e.g., In re Laufer, 245 N.J. 265 (2019) (admonition for attorney who, during contentious domestic violence proceedings, made the false

and reckless statement that he had a County Prosecutor "in [his] pocket;" the statement was made in response to a legitimate inquiry from opposing counsel, in the courtroom, in front of the litigants and court staff; violation of RPC 8.4(d); the attorney had an unblemished disciplinary history in forty-three years at the bar; expressed remorse for his statements; and enjoyed a reputation for good character and extensive contributions to the community); In re Ziegler, 199 N.J. 123 (2009) (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 the wife of being an "unmitigated liar" and threatened that he would prove it and have her punished for perjury; the attorney also threatened his adversary with a "Battle Royale" and ethics charges; violations of RPC 3.2 and RPC 8.4(d); mitigating factors included the attorney's unblemished forty-year ethics history, his recognition that his conduct had been intemperate, and the passage of seven years from the time of the misconduct until the imposition of discipline); 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;" violation of Disciplinary Rule 7-106(C)(6) (undignified or discourteous conduct degrading to a tribunal) and other DRs equivalent to RPC 8.4(a) and (d); on the one hand, we took into account that the attorney's misconduct was not an isolated incident; on the other hand, the attorney had been a member of the bar for more than thirty years, with no prior history; he was sixty-seven years old and retired from the practice of law; and there was no harm to a client or party as the result of his misconduct); In re Stolz, 219 N.J. 123 (2014) (three-month suspension for attorney who made "sarcastic," "wildly inappropriate," and "discriminatory" comments to his adversary, such as "Did you get beat up in school a lot . . . because you whine like a little girl"; "Why don't you grow a pair?"; "What's that girlie email you have. Hotbox.com or something?"; "Why would I want to touch a f!% like you?"; the attorney also lied to the court and to his adversary that he had not received the certification in support of a motion filed by the adversary; aggravating factors were the attorney's lack of early recognition of and regret for his actions; violations of RPC 3.3(a)(1), RPC 3.3(a)(5), RPC 4.1(a), RPC 8.4(a), and RPC 8.4(d); no prior discipline); In re Rifai, 204 N.J. 592 (2011) (default; 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 obtained postponements of the trial, once based on a false claim of a motor vehicle accident; and was "extremely uncooperative and belligerent" with the ethics committee investigator; violations of RPC 3.2; RPC 4.4(a) (failure to respect the rights of third persons by using means that have no substantial purpose other than to embarrass, delay, or burden a third person); RPC 8.1(b) (failure to cooperate with disciplinary authorities); and RPC 8.4(d); the attorney had been reprimanded on two prior occasions); In re Hall, 169 N.J. 347 (2001) (Hall I) (attorney suspended for three months after she was found in contempt by a Superior Court judge for maligning the court, refusing to abide by the court's instructions, suggesting the existence of a conspiracy between the court and her adversaries, making baseless charges of racism against the court and accusing her adversaries of lying; the attorney also failed to reply to the ethics grievances and, after her temporary suspension, maintained a law office and failed to file the required affidavit with the OAE; violations of RPC 3.5(c); RPC 8.1(b); and RPC 8.4(d)); In re Van Syoc, 216 N.J. 427 (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); other violations included another violation of RPC

8.2(a) and RPC 8.4(d); aggravating factors included the attorney's disciplinary history, which included an admonition and a reprimand; the absence of remorse; and the fact that his misconduct occurred in the presence 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); In re Maffongelli, 176 N.J. 514 (2003) (one-year suspension imposed on attorney who displayed a pattern of inability and refusal to follow the court rules, sending the same improper documents to the courts, even after receiving clear instructions not to do so; failed or refused to appear at hearings where his presence was required; showed a woeful lack of familiarity with court rules and practices; refused to observe the dignity of court proceedings; refused to accept responsibility for his mistakes, blaming court staff for his problems; and wasted many hours of judges' and staff time; violations of RPC 1.1(a) (gross neglect); RPC 1.3 (lack of diligence); former RPC 1.4(a) (failure to keep a client reasonably informed about the status of a matter and comply with reasonable requests for information); former RPC 1.4(b) (failure to explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation); RPC 1.5(c) (deficient fee agreement); RPC 3.2; RPC 3.3(a)(5) (failure to disclose to the tribunal a material fact knowing that the

omission is reasonably certain to mislead the tribunal); RPC 3.4(c) (knowingly disobeying an obligation under the rules of a tribunal); and RPC 8.4(c) and (d)); In re Vincenti, 92 N.J. 591 (1983) (Vincenti I) (one-year suspension for attorney who, in two separate court proceedings, 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; the attorney was disciplined for conduct prejudicial to the administration of justice; conduct that adversely reflects on one's ability to practice law; undignified or discourteous conduct degrading to a tribunal; and knowingly making of false accusations against a judge); In re Shearin, 172 N.J. 560 (2002) (Shearin II) (three-year suspension imposed by reciprocal discipline 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; violations of RPC 3.3(a)(1) (false statement of material fact or law to a tribunal); RPC 3.5(c); RPC 1.2(d) (counseling or assisting a client in conduct that the lawyer knows is illegal, criminal, or fraudulent); RPC 3.1 (frivolous claim); RPC 3.2; RPC 3.3(a)(4); RPC 3.4(b) (falsifying evidence, counseling or assisting a witness to testify falsely or offering an illegal inducement to a witness); and RPC 4.1(a)(1) (false statement of material fact or law to a third person); Shearin had previously received a one-year suspension for similar misconduct); In re Hall, 170 N.J. 400 (2002) (Hall II) (three-year suspension imposed after attorney made numerous misrepresentations to trial and appellate judges, made false and baseless accusations against judges and adversaries, served a fraudulent subpoena, failed to appear for court proceedings and then misrepresented that she had not received notice, and displayed egregious courtroom demeanor by repeatedly interrupting others and becoming unduly argumentative and abusive; violations of RPC 1.3; former RPC 1.4(a) and (b); RPC 3.1; RPC 3.2; RPC 3.4(a) (unlawful obstruction to and of evidence); RPC 3.4(e) (prohibited allusions at trial); and RPC 8.4(c) and (d); her conduct occurred in four cases and spanned more than one year; as noted above, Hall had received a three-month suspension for similar

misconduct); and In re Vincenti, 152 N.J. 253 (1998) (Vincenti II) (disbarment for attorney described by the Court as an "arrogant bully," "ethically bankrupt," and a "renegade attorney;" this was the attorney's fifth encounter with the disciplinary system).

Based on New Jersey disciplinary precedent, an admonition would be woefully insufficient discipline for the totality of respondent's conduct. The attorneys who received admonitions engaged in conduct limited to a single client matter in a single court appearance. Respondent's conduct took place during two court hearings in two matters, one of which also involved a mediation. His remarks were directed at two trial judges, the Appellate Division, and continues, currently, toward New Jersey disciplinary authorities.

A suspension, however, would be too harsh. Aside from the improper remarks, respondent did not commit additional, equally serious ethics infractions, such as lying to the court and adversaries (Stolz and Rifai) or threatening others. He also has an unblemished disciplinary history (Van Syoc). Thus, either a reprimand or a censure is in order.

Respondent's conduct is most similar to that of the attorneys in In re Stanley and Hall I. Stanley engaged in shouting and other discourteous behavior toward the court in three separate cases. As we summarized, his "language,

constant interruptions, arrogance, [and] retorts to rulings displayed a contumacious lack of respect." 102 N.J. at 253. In our view, it was "no excuse that the trial judge may have been in error in his rulings." Ibid.

In determining that a reprimand was sufficient discipline for Stanley, we considered, on the one hand, that his behavior was not an isolated incident but rather took place during hearings before three courts. Id. at 254. On the other hand, we noted that Stanley had been a member of the bar for more than thirty years, with no prior history; he was sixty-seven years old and retired from the practice of law; and there was no harm to a client or party as the result of his misconduct. Ibid.

In Hall I, a default matter, the trial court dismissed a complaint filed by Hall. In the Matter of Sharon Hall, DRB 99-450 (September 18, 2000) (slip op. at 4). She also denied Hall's motion for reconsideration. Ibid.

About a month later, the judge held Hall in contempt of court for accusing her adversaries of being liars, maligning the court, refusing to abide by the court's instructions, and suggesting that there was a conspiracy between the court and defense counsel. Ibid. Hall also made baseless charges of racism against the court. Ibid. Despite the trial judge's finding of contempt, Hall

continued the improper behavior, by filing another motion for reconsideration and to have the judge disqualified from the case. Ibid.

In another matter, Hall's client's claim had been dismissed due to Hall's own "contumacious and outrageous conduct," which was not described in our decision. Id. at 5. In a third matter, a grievance was filed against the attorney for her "wrongful conduct." Ibid.

Thereafter, the Court temporarily suspended Hall, who subsequently failed to file an affidavit of compliance with R. 1:20-20 and failed to disconnect her office telephone. Id. at 2-3. She also failed to submit a written reply to the three grievances filed against her in respect of the above matters. Id. at 5. We voted to impose a three-month suspension due to Hall's default. Id. at 7.

Here, respondent's misconduct stems from a scorched-earth strategy for handling his cases. In his pro se landlord-tenant case, he became loud and aggressive during a mediation and called his adversary a "scumbag." His conduct was so confrontational that, at one point, the mediator was required to "physically intervene."

When the mediation failed, and the parties returned to the courtroom, respondent repeatedly interrupted the judge and spoke over her. When the judge

declared him in default and called the matter for to trial, he walked out of the courtroom.

In that same matter, after respondent had succeeded on an emergent appeal, he accused the Appellate Division of either dropping the ball or being "in on the scam" when the court's representative told him that the court was without jurisdiction to consider his objections to the submissions offered by the court and Blender in opposition to his motion for an emergent appeal.

Respondent behaved similarly in the Bascom matter. He referred to opposing counsel as "clowns" and the judge as "corrupt;" interrupted and spoke over the judge; and characterized his bench decision as "extrajudicial."

Respondent's conduct took place on three different occasions over the course of two weeks. Each time, he failed to conduct himself appropriately and professionally. Further, he seemed unable to control his outbursts. No one, including adversaries, judges, and court personnel, was immune from his vitriol.

In his pro se landlord-tenant action, respondent was, himself, facing eviction, and, thus, it can be argued that he had lost perspective. However, he never gained perspective even after he prevailed in the Appellate Division. Moreover, he had no personal stake in the Bascom matter which might have explained, though not justified, his loss of self-control.

When Stanley and Hall were decided, censure was not yet an available quantum of discipline.[4] Presumably, if censure were such an option at the time, the Court may have imposed a censure on Stanley, were it not for the mitigation. Similarly, rather than suspend Hall, the Court may have censured her, due to her default.

Stanley, whose conduct took place in three matters, received a reprimand due to the significant mitigation in his favor. Presumably, a censure may have been imposed if that discipline had been an option at the time. Here, respondent does not enjoy the mitigation that weighed in Stanley's favor. At the time of his misconduct, Stanley had been an attorney for more than thirty years and had no disciplinary record. Although respondent has an unblemished disciplinary record, he had been an attorney for only eight years when he committed the misconduct in this matter.

Further, like Hall, respondent has defaulted in this matter, which, pursuant to In re Kivler, 193 N.J. 332, 342 (2008) (citations omitted), "acts as an aggravating factor, which is sufficient to permit a penalty that would otherwise

[4] Effective September 3, 2002, the Court adopted R. 1:20-15A, which codified all current categories of discipline.

be appropriate to be further enhanced." Although Hall received a suspension, a censure was not an option at the time of her misconduct.

For the totality of respondent's misconduct, which occurred in two different matters, and has continued, unabated, toward the OAE and the OBC in connection with his MVD, we determine to impose a censure. Moreover, as a condition, within sixty days of the Court's disciplinary Order in this case, respondent is to complete an anger management course, proof of the successful completion of which must be provided to the OAE.

Vice-Chair Gallipoli and Members Joseph and Zmirich voted to impose a three-month suspension with the same condition.

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
Bruce W. Clark, Chair

By: 
Johanna Barba Jones
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of David Richard Cubby, Jr.
Docket No. DRB 20-304

Decided: August 3, 2021

Disposition: Censure

Members	Censure	Three-Month Suspension
Clark	X	
Gallipoli		X
Boyer	X	
Hoberman	X	
Joseph		X
Petrou	X	
Rivera	X	
Singer	X	
Zmirich		X
Total:	6	3

Johanna Barba Jones
Chief Counsel