

Supreme Court of New Jersey  
Disciplinary Review Board  
Docket No. DRB 21-205  
District Docket No. XIV-2021-0016E

---

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

---

:  
:  
:  
:  
:  
:  
:  
:  
:  
:

Decision

Decided: March 15, 2022

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 (failure to treat all persons involved in the legal process with courtesy and consideration) and RPC

8.1(b) (two instances – failure to cooperate with disciplinary authorities).<sup>1</sup>

For the reasons set forth below, we determine to impose a three-month suspension, 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 a practice of law in Waldwick, New Jersey.

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

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

Finally, effective October 18, 2021, the Court declared respondent ineligible to practice law in New Jersey for his failure to comply with Continuing Legal Education (CLE) requirements.

Respondent has not cured those CPF, IOLTA, or CLE deficiencies and, thus, remains ineligible to practice law in New Jersey on all three bases.

---

<sup>1</sup> Due to respondent's failure to file an answer to the formal ethics complaint, the OAE amended the complaint to include the second RPC 8.1(b) charge.

Moreover, effective July 27, 2021, the Court temporarily suspended respondent for his failure to cooperate with the OAE's investigation underlying this matter. In its Order, the Court also directed that respondent, prior to any reinstatement, demonstrate his fitness to practice law, as attested to by a mental health professional approved by the OAE. In re Cubby, 247 N.J. 487 (2021).

On August 3, 2021, we transmitted to the Court a decision, in a default matter, imposing a censure for respondent's violation of RPC 3.2 (two instances); RPC 3.5(c) (two instances – conduct intended to disrupt a tribunal); RPC 8.1(b); RPC 8.2(a) (two instances – statement made with reckless disregard for the truth or falsity thereof concerning the qualifications of a judge); and RPC 8.4(d) (two instances – conduct prejudicial to the administration of justice). In the Matter of David Richard Cubby, Jr., DRB 20-304 (August 3, 2021) (Cubby I). That decision encompassed two consolidated matters and stemmed from respondent's inability to conduct himself appropriately and professionally toward his adversaries; Superior Court judges; court personnel; and disciplinary authorities.

In the first matter, respondent, in his capacity as a pro se defendant in a landlord tenant case, continually interrupted his adversary during mediation and called him a “scumbag[.]” In the Matter of David Richard Cubby, Jr., DRB 20-304 (August 3, 2021) (slip op. at 15). After mediation failed, respondent, during

a court appearance, repeatedly interrupted the judge with insulting remarks; called her “corrupt[;]” refused to accept the judge’s rulings; and left the courtroom after she had directed that the matter proceed to trial. Id. at 24-25. Respondent then filed an emergent motion to stay the Law Division’s order of eviction, which the Appellate Division granted. Despite his success, respondent accused the Appellate Division of “either dropp[ing] the ball or [being] in on the scam” when the Appellate Division informed respondent that it had no jurisdiction to consider his objections to the submissions of his adversary and the trial judge. Id. at 35.

In the second matter, respondent, who represented a defendant in a Chancery Division matter, repeatedly interrupted the trial judge as he issued a decision from the bench. Specifically, respondent called the judge “corrupt[;]” accused the judge of issuing an “extrajudicial” decision; referred to opposing counsel as “clowns[;]” and accused the sheriff’s officer of threatening him after the officer had directed him not to interrupt the court. Id. at 21-22.

During the ensuing ethics proceedings, respondent continued his vitriolic behavior by engaging in unsupported attacks against us; the OAE and its procedures; the witnesses; the District Ethics Committee (the DEC) chair; and the Office of Board Counsel (the OBC) and its procedures. Among other attacks, respondent baselessly accused disciplinary authorities of corruption or

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

In determining to impose a censure, we considered the default status of the matter and the fact that respondent’s improper behavior had encompassed two separate matters and had continued, unabated, toward us, the OAE, and the OBC. In mitigation, however, we considered respondent’s unblemished disciplinary history. Finally, we determined to require respondent to complete an anger management course within sixty days of the Court’s disciplinary Order. Our decision in Cubby I is pending with the Court.

On September 9, 2021, the Court issued an Order requiring respondent to provide to the OAE, within ten days, the names of the financial institutions in which he maintains his attorney trust and business accounts, pursuant to R. 1:21-6(a). In re Cubby, \_\_ N.J. \_\_ (2021).

Service of process was proper. On August 13, 2021, the OAE sent a copy of the formal ethics complaint, by certified and regular mail, to respondent’s home address of record. As of September 13, 2021, the United States Postal Service tracking information indicated that the certified mail was being returned

to the OAE because the “forwarding order for [the] address [was] no longer valid.” The regular mail was not returned.

On September 14, 2021, the OAE sent a second letter to respondent’s home address, by regular and electronic mail, 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). Neither the regular nor electronic mail were returned to the OAE.

On September 16, 2021, following a nationwide records search, the OAE discovered no new addresses associated with respondent.

As of September 23, 2021, respondent had not filed an answer to the complaint, and the time within which he was required to do so had expired. Accordingly, the OAE certified this matter to us as a default.

On September 28, 2021, Chief Counsel to the Board sent respondent a letter to his home address, by certified and regular mail, and also by electronic mail, informing him that the matter was scheduled before the Board on November 18, 2021, and that any motion to vacate the default must be filed by October 12, 2021. None of the mail was returned to the OBC.

Moreover, on October 4, 2021, the OBC published a Notice to the Bar in the New Jersey Law Journal, stating that the matter would be reviewed by the Board on November 18, 2021. The notice informed respondent that, unless he filed a motion to vacate the default by October 12, 2021, his failure to answer would be deemed an admission of the allegations of the complaint. Respondent did not file a motion to vacate the default.

We now turn to the allegations of the complaint.

On December 29, 2020, an OBC judiciary secretary sent respondent an e-mail, with copies to OAE and OBC personnel, that attached then OBC Chief Counsel Ellen Brodsky's letter regarding the Cubby I matter. Specifically, the letter informed the parties of the default status of Cubby I, including the fact that the record was no longer open, the scheduled review date for that matter, and the deadline by which respondent could file a motion to vacate the default.

A few hours later, in a reply to the judiciary secretary's e-mail, respondent "reject[ed] the validity" of Brodsky's letter, accused us of "attempting to arbitrarily declare [the record] closed [. . .] in a deliberate attempt to deny [him] his civil and due process rights[,]" and accused the OAE of "grievous procedural violations and deliberate wrongdoing" based on his belief that Cubby I had proceeded to default "under false pretenses[,]" without a "properly plead [sic] complaint[,]" and without any "evidence of an investigation or [sic] any type[.]"

Additionally, respondent alleged that the OBC intentionally had scheduled the deadline by which he could move to vacate the default to conflict “with dates set regarding false criminal charges filed against [him] by the [C]ity of Paterson.” Thereafter, respondent accused the OAE and New Jersey prosecutors and judges of “deliberately disregarding the law and maintaining false charges [against him] in retaliation.” Finally, respondent made the following threat to the judiciary secretary:

[y]ou are personally on notice that your actions may have been done in furtherance of a criminal conspiracy. Failure to bring this to the attention of your highest supervisors and documenting the same will result in my assuming you made a personal choice to disregard deliberate illegal acts and I will have no choice but to hold you personally liable.

[C¶9; Ex.5.]

Upon receiving respondent’s e-mail, the judiciary secretary, who had no previous interactions with respondent, claimed that she was “shocked” and immediately alerted her supervisor and Chief Counsel Brodsky. Chief Counsel Brodsky retired effective December 31, 2020, and Johanna Barba Jones was named Chief Counsel effective January 4, 2021.

On January 11, 2021, Chief Counsel Jones sent respondent a letter in response to his e-mail, with copies to the OAE, which explained the functions of the OAE, the Board, and the OBC within the disciplinary system; reiterated



the procedural posture and default status of Cubby I; advised respondent that his e-mail to the judiciary secretary had been included in the record and that he could explain his objections to the OAE's complaint in his motion to vacate the default; and requested that respondent refrain from threatening Court staff.

On February 2, 2021, an OAE attorney sent respondent a letter, by certified, regular, and electronic mail, which advised him that the OAE had opened an ethics investigation of his threatening e-mail to the judiciary secretary and requested that he respond, in writing, with an explanation of his conduct by February 17, 2021.

Later on February 2, 2021, respondent replied, via e-mail, to the OAE attorney's letter and stated that he had "reject[ed] service of the [. . .] e-mail and any attempts to serve [. . .] [him] by mail." Respondent also accused the OAE attorney of official misconduct, alleged that the OAE attorney had a "known" conflict of interest against him, and declared the OAE attorney "barred" from any further "official actions" against him until his accusations against the OAE attorney were resolved. Respondent further threatened that, "if [the OAE attorney] continu[ed] to abuse his office by filing sham complaints in order to cover for his unlawful conduct, [respondent would] be forced to seek a restraining order against him."

In response to his e-mail, the OAE attorney sent respondent a second February 2, 2021 letter, via certified, regular, and electronic mail, advising him that his attempt to reject service was groundless, that his accusations of misconduct were without merit, and that the OAE attorney was neither conflicted nor barred from investigating respondent. Additionally, the OAE attorney reminded respondent of his obligation to cooperate with the investigation and that his failure to do so could result in the issuance of a formal ethics complaint or his temporary suspension.

Minutes later, respondent replied, via e-mail, to the OAE attorney, with copies to OAE and OBC personnel, in which he accused the OAE attorney of “additional instances of official misconduct[,]” demanded that all OAE and OBC personnel “take appropriate steps to prevent further harassment on the part of [the OAE attorney],” and threatened that “[a]ny person who transmits further correspondence on behalf of [the OAE attorney] shall be engaging in the same conduct.” Respondent also stated that the OAE attorney could not “use his position to force [OAE and OBC personnel] to violate the law” and that he would “not respond further.”

On March 2, 2021, First Assistant Ethics Counsel for the OAE sent respondent a letter, via certified, regular, and electronic mail, advising him that the OAE had not received his required written reply regarding his threatening e-

mail to the judiciary secretary. Consequently, the First Assistant Ethics Counsel directed that respondent appear for a virtual demand interview, via Microsoft Teams, on March 25, 2021, at 10:00 a.m.<sup>2</sup> The First Assistant Ethics Counsel informed respondent that, should he fail to appear for the demand interview, the OAE would move for his immediate temporary suspension and file an ethics complaint for his failure to cooperate, in violation of RPC 8.1(b). Respondent did not reply to the First Assistant Ethics Counsel's e-mail, which was not returned as undeliverable.<sup>3</sup>

On March 25, 2021, at 10:00 a.m., the OAE initiated the demand interview, via Microsoft Teams. Although the OAE remained connected to Microsoft Teams for approximately twenty minutes, respondent failed to appear. At 10:45 a.m., however, respondent replied to the OAE's March 2, 2021 e-mail containing the Microsoft Teams invitation and stated that he was unaware "of any meeting scheduled for today" and requested an explanation from the OAE. At 11:58 a.m., the OAE attorney replied to respondent's e-mail and reminded him of the First Assistant Ethics Counsel's March 2, 2021 letter that scheduled the demand interview, informed respondent that the OAE would reschedule the

---

<sup>2</sup> On March 2, 2021, the OAE sent respondent, via a separate e-mail, a Microsoft Teams meeting invitation, which was not returned to the OAE as undeliverable.

<sup>3</sup> On March 22, 2021, the certified mail was returned to the OAE as unclaimed. The record does not state whether the regular mail was returned.

demand interview for April 12, 2021, at 10:00 a.m., via Microsoft Teams, and requested that respondent cooperate with the OAE by appearing for the demand interview as well as providing a written reply regarding his threatening e-mail to the judiciary secretary. Respondent did not reply to the OAE attorney's e-mail, which was not returned as undeliverable.

On April 12, 2021, at 10:00 a.m., the OAE initiated the demand interview, via Microsoft Teams, and remained connected for approximately fifteen minutes; however, respondent, again, failed to appear. Respondent neither provided the OAE with a written reply regarding his threatening e-mail to the judiciary secretary nor contacted the OAE in any manner since his March 25, 2021 e-mail, in which he alleged ignorance of the OAE's demand interview.

Based on the above facts, the complaint charged respondent with having violated RPC 3.2 and RPC 8.1(b) (two instances).

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. The Court has opined that attorneys who lack "civility, good manners[,] and common courtesy . . . tarnish[] the entire

image of what the bar stands for.” In re McLaughlin, 144 N.J. 133, 154 (1996). Lawyers must, therefore, “display a courteous and respectful attitude not only towards the court but towards opposing counsel, parties in the case, witnesses, court officers, clerks - in short, towards everyone and anyone who has anything to do with the legal process.” In re Vincenti, 114 N.J. 275, 285 (1989). “Vilification, intimidation, abuse[,] and threats have no place in the legal arsenal.” In re Mezzacca, 67 N.J. 387, 389-90 (1975).

Respondent violated these principles in his December 29, 2020 e-mail to the judiciary secretary, with whom he had no prior interaction. In his e-mail, respondent baselessly accused the judiciary secretary of engaging in a criminal conspiracy and threatened her with personal liability for transmitting a letter from OBC Chief Counsel, which informed relevant parties of basic procedural information regarding Cubby I. In that same e-mail, respondent also attacked the integrity of the OBC and the Board, which he accused of “deliberate[ly] attempt[ing] to deny [him] his civil and due process rights” based on the default status of Cubby I. Respondent also expressed his incredible belief that the OBC had purposely scheduled the deadline by which he could move to vacate the default in Cubby I to conflict with his unrelated, criminal matter in Passaic County. Finally, respondent accused the OAE and New Jersey prosecutors and judges of “deliberately disregarding the law and maintaining false charges

[against him] in retaliation.” Respondent’s e-mail to the judiciary secretary was both vitriolic and threatening and served no purpose other than to disrespect and intimidate the secretary, in violation of RPC 3.2.

Respondent further violated RPC 3.2 in his discourteous and threatening e-mails to the OAE, wherein he repeatedly accused the OAE attorney of official misconduct; alleged, without evidence, that the OAE attorney had a “known conflict of interest” against him; and threatened to seek a restraining order against the OAE attorney for his role in the OAE’s investigation. Additionally, respondent demanded that OAE staff prevent the OAE attorney from discharging his investigative duties and threatened that anyone who assisted the OAE attorney would, likewise, be guilty of misconduct.

RPC 8.1(b) requires an attorney to “respond to a lawful demand for information from . . . [a] disciplinary authority.” Respondent violated this Rule in two respects. First, he not only ignored but also attacked the OAE’s numerous attempts to investigate his improper December 29, 2020 e-mail to the judiciary secretary. Specifically, respondent expressly, and without any legal basis, “reject[ed] service” of the OAE attorney’s first February 2, 2021 letter and demanded that OAE personnel no longer assist the OAE attorney in the investigation. Making matters worse, respondent failed to appear for two scheduled demand interviews, despite proper notice, and failed to provide the

OAE with a written reply regarding his e-mail to the judiciary secretary. Second, he failed to respond to the disciplinary complaint and allowed the matter to proceed as a default.

In sum, we find that respondent violated RPC 3.2 and RPC 8.1(b) (two instances). The sole issue left for us to determine is the appropriate quantum of discipline.

Disrespectful or insulting conduct to persons involved in the legal process leads to a broad spectrum of discipline, ranging from an admonition to disbarment, depending on the presence of other ethics violations. See, e.g., In re Gahles, 182 N.J. 311 (2005) (admonition for 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 violation of RPC 3.2; 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 re Geller, 177 N.J. 505 (2003) (reprimand for attorney who filed baseless motions accusing two judges of bias against him (characterizing one judge’s orders as “horse\*\*\*t,” and, in a deposition, referring to two judges as “corrupt” and labeling one of them “short, ugly and insecure”); the attorney also made personal attacks against almost everyone involved in the

matter, including his adversary (“a thief”) and the opposing party (“a moron,” who “lies like a rug”); in addition, the attorney failed to comply with court orders (at times defiantly) and with the disciplinary special master’s direction not to contact a judge; the attorney also 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”; during the ethics proceedings, the attorney questioned whether the OAE presenter was “over prosecuting” the case because he “desire[d] to be a Monmouth County judge”; violations of RPC 3.1 (frivolous claim); RPC 3.2; RPC 3.4(c) (knowingly disobeying an obligation under the rules of a tribunal); RPC 3.4(e) (prohibited allusions at trial); RPC 3.5(c); 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 8.2(a); and RPC 8.4(d); in mitigation, the attorney’s conduct occurred in the course of his own child-custody case, he had an unblemished twenty-two-year career, and he was held in high regard personally and professionally because of his involvement in legal and community activities); In re Rifai, 204 N.J. 592 (2011) (three-month suspension for attorney in a default matter who called a municipal prosecutor an “idiot,” among other things; the attorney also bumped into an investigating officer



during a break in trial and repeatedly obtained postponements of the trial, once based on a false claim of a motor vehicle accident; when contacted by an ethics committee investigator, the attorney “raised his voice to the [investigator,]” “challenged the [DEC’s] authority to investigate the grievance[,]” “and was extremely uncooperative and belligerent during the investigation[,]” violations of RPC 3.2; RPC 4.4(a); RPC 8.1(b); and RPC 8.4(d); the attorney had been reprimanded on two prior occasions for unrelated conduct); In re Hall, 169 N.J. 347 (2001) (Hall I) (three-month suspension for attorney in a default matter; the attorney 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); the attorney had no prior final discipline at that time); In re Van Syoc, 216 N.J. 427 (2014) (six-month suspension for attorney who, during a deposition, called opposing counsel “stupid” and a “bush league lawyer[,]” in violation of RPC 3.2; the attorney also impugned the integrity of the trial judge by stating that he was in the defense’s pocket, in violation of RPC 8.2(a); in aggravation, we considered 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 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 false accusations against a judge); In re Hall, 170 N.J. 400 (2002) (Hall II) (three-year suspension for attorney who 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 (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 3.1; RPC 3.2; RPC 3.4(a) (unlawful obstruction to and of evidence); RPC 3.4(e); and RPCs 8.4(c) and (d); her conduct occurred in four cases and spanned more than one year; as noted above, Hall had received a prior 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).

On November 18, 2021, the Court censured an attorney who had engaged in offensive and threatening behavior in two separate matters. In re Bailey, 249 N.J. 49 (2021). In the first matter, the attorney intruded into an arbitration hearing taking place in his law office, began taking photographs, and then stated “[t]his will be in the newspaper when I put this in there after we kick you’re a\*\*es. You should be ashamed of yourself for kicking people out of a building and you have to live with yourself.” In the Matter of Adam Leitman Bailey, DRB 20-161 (March 29, 2021) (Slip op. at 3). In the second matter, the attorney

threatened arrest for federal crimes to gain an improper advantage in a civil matter, which involved an individual who had purportedly created a defamatory website. When the individual asked for an explanation for his purported arrest, the attorney replied, “[o]h, you have no idea what you just got into, buddy, you have no idea. Welcome to my world. Now you’re my b\*\*\*h.” Id. at 8.

Compounding matters, the attorney made false statements to the individual regarding New York defamation law and misrepresented that he had obtained a copy of a protective order entered against the individual in favor of his former girlfriend. Although we considered imposing a term of suspension, we found that the attorney’s “overwhelming mitigation[,]” including his lack of prior discipline in twenty-six years at the bar, his letters of reference and good deeds, and his charitable ventures warranted a censure. Id. at 25.

When an attorney fails to cooperate with disciplinary authorities, and previously has been disciplined, but the attorney’s ethics record is not serious, reprimands have been imposed. See In re Howard, 244 N.J. 411 (2020) (attorney failed to respond to the DEC’s four requests for a written reply to an ethics grievance, which alleged that the attorney had failed to prosecute his client’s claim for social security disability benefits; the attorney received a prior censure for similar misconduct in which he had failed to cooperate with disciplinary authorities; in mitigation, the attorney ultimately retained ethics counsel,

cooperated with the DEC, and stipulated to some of his misconduct), and In re Larkins, 217 N.J. 20 (2014) (default; attorney failed to reply to the ethics investigator's attempts to obtain information about the grievance and failed to file an answer to the formal ethics complaint; although we noted that a single violation of RPC 8.1(b), in a default matter, does not necessitate enhancement of the discipline from an admonition to a reprimand, a reprimand was imposed based on a prior admonition and, more significantly, a 2013 censure, also in a default matter, in which the attorney had failed to cooperate with an ethics investigation).

Here, respondent's threatening and disrespectful conduct is most similar to the behavior of the attorneys suspended for three months in Rifai and Hall I<sup>4</sup> and the censured attorney in Bailey.

Like the attorney in Rifai, who raised his voice to the ethics investigator and challenged the DEC's authority to investigate the grievance, respondent was extremely uncooperative and belligerent during the ethics investigation. Not only did he fail to appear for two scheduled demand interviews or to reply, in writing, to the OAE regarding his e-mail to the judiciary secretary, but he also

---

<sup>4</sup> When Hall I was decided, censure was not yet an available quantum of discipline. See R. 1:20-15A (codified all current categories of discipline effective September 3, 2002). Hence, if censure had been an option at the time, we might have imposed that sanction on Hall upon her default.

attacked the OAE's authority to investigate this matter. Specifically, without any legal support, respondent "reject[ed] service" of the OAE attorney's initial February 2, 2021 letter, accused the OAE attorney of official misconduct, and attempted to intimidate OAE staff out of assisting the OAE attorney in the investigation. Similar to his behavior in Cubby I, respondent failed to even attempt to assert a meritorious defense to the underlying charges, instead attempting to deflect the investigation by accusing OAE investigators of wrongdoing.

In Bailey, the attorney improperly engaged in intimidating behavior by threatening criminal charges to gain an advantage in civil matters. Here, the instant matter does not stem from a civil case, but rather, a disciplinary one. Worse, respondent improperly threatened personal liability and court action in a futile attempt to subvert the disciplinary process governing his misconduct. Specifically, respondent threatened a non-attorney staff member with personal liability based on his unsupported belief that she had engaged in a crime by transmitting a letter containing procedural information in Cubby I. Moreover, respondent baselessly threatened to seek a restraining order against an OAE attorney for his good faith attempts to engage respondent in the disciplinary process. Respondent's abusive behavior and threats of criminal prosecution and court action were consistent with his scorched-earth strategy to undermine the

disciplinary process. His misconduct served no purpose other than to attempt to intimidate Court staff and disciplinary authorities.

Moreover, like Hall, who was held in contempt for, among other things, accusing her adversaries of being liars, maligning the court, and suggesting the existence of a conspiracy between the court and defense counsel, respondent, in his e-mail to the judiciary secretary, likewise suggested that disciplinary authorities, prosecutors, and judges have conspired to falsely accuse him of misconduct “in retaliation.” Further, like Hall, respondent failed to respond to the ethics grievance and allowed this matter to proceed as a default, which serves as an aggravating factor. See In re Kivler, 193 N.J. 332, 342 (2008) (citations omitted) (“a respondent’s default or failure to cooperate with the investigative authorities acts as an aggravating factor, which is sufficient to permit a penalty that would otherwise be appropriate to be further enhanced[ ]”).

In further aggravation, respondent has not utilized his prior experiences with the disciplinary system in Cubby I as a foundation for reform. See In re Zeitler, 182 N.J. 389, 398 (2005) (“[d]espite having received numerous opportunities to reform himself, respondent has continued to display his disregard, indeed contempt, for our disciplinary rules and our ethics system”). Indeed, this is respondent’s second default for substantially similar misconduct in less than twelve months. The Court has signaled an inclination toward

progressive discipline and stern treatment of repeat offenders. In such cases, enhanced discipline is appropriate. See In re Kantor, 180 N.J. 226 (2004) (disbarment for abandonment of clients and repeated failure to cooperate with the disciplinary system).

Finally, unlike Bailey, who received a censure based on his “overwhelming mitigation[,]” including his unblemished disciplinary record in twenty-six-years at the bar, respondent, who was admitted only ten years ago, does not benefit from any mitigation.

On balance, considering that respondent’s vitriolic behavior has continued, uninterrupted, since our recent censure in Cubby I, we determine that a three-month suspension is necessary to protect the public and preserve confidence in the bar.

Additionally, based on his erratic behavior throughout this matter, we also determine to reiterate that respondent (1) comply with the Court’s July 27, 2021 temporary suspension Order requiring, prior to his reinstatement, that he demonstrate his fitness to practice law, as attested to by a mental health professional approved by the OAE, and (2) complete an anger management course, proof of the successful completion of which must be provided to the OAE, as required by our pending decision imposing a censure. In re Cubby, 247 N.J. 487 (2021); In the Matter of David Richard Cubby, Jr., DRB 20-304




(August 3, 2021).

Chair Gallipoli and Member Campelo voted to impose a six-month suspension, with the same conditions.

Member Boyer was absent.

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

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

By:   
\_\_\_\_\_  
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 21-205

Decided: March 15, 2022

Disposition: Three-Month Suspension

<i>Members</i>	Three-Month Suspension	Six-Month Suspension	Absent
Gallipoli		X	
Singer	X		
Boyer			X
Campelo		X	
Hoberman	X		
Joseph	X		
Menaker	X		
Petrou	X		
Rivera	X		
Total:	6	2	1



Johanna Barba Jones  
Chief Counsel