Supreme Court of New Jersey
Disciplinary Review Board
Docket No. DRB 23-138
District Docket No. IV-2020-0024E

In the Matter of David S. Rochman
An Attorney at Law

Argued
September 21, 2023

Decided
December 6, 2023

Lynda L. Hinkle appeared on behalf of the
District IV Ethics Committee.

Mark S. Kancher appeared on behalf of respondent.

Table of Contents

Introduction

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

This matter previously was before us on a recommendation for an admonition filed by the District IV Ethics Committee (the DEC). On May 24, 2023, we determined to treat the admonition as a recommendation for greater discipline, pursuant to R. 1:20-15(f)(4), and to bring the matter on for oral argument.

The formal ethics complaint charged respondent with having violated RPC 1.2(a) (failing to abide by the client's decisions concerning the scope of representation); RPC 1.5(b) (failing to set forth in writing the basis or rate of the legal fee); RPC 3.1 (engaging in frivolous litigation); RPC 3.2 (failing to expedite litigation and to treat with courtesy all persons involved in the legal process); RPC 3.3(a)(1) (knowingly making a false statement of material fact or law to a tribunal); RPC 3.4(a) (unlawfully obstructing another party's access to evidence); RPC 3.4(c) (knowingly disobeying an obligation under the rules of a tribunal); RPC 8.4(c) (engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation); and RPC 8.4(d) (engaging in conduct prejudicial to the administration of justice).

For the reasons set forth below, we determine that an admonition is the appropriate quantum of discipline for respondent's misconduct.

Respondent earned admission to the New Jersey and Pennsylvania bars in 1990. At the relevant time, he maintained a practice of law in Voorhees, New Jersey.

On June 16, 2010, respondent received a reprimand for violating RPC 1.3 (lacking diligence); RPC 1.4(b) (failing to communicate with the client); RPC 1.4(c) (failing to explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation); and RPC 1.15(b) (failing to promptly deliver funds to the client). In re Rochman, 202 N.J. 133 (2010). (Rochman I).

In that matter, in September 2004, Jonathan Sellers, Jr., retained respondent to seek a reduction in his child support obligations because he had been furloughed from his job. In the Matter of David S. Rochman, DRB 09-037 (April 20, 2010) at 2-3. For the next several months, respondent failed to meet with Sellers or to return any of his telephone calls, despite Seller's repeated attempts to obtain updates regarding his matter. Id. at 4-7.

In May 2005, after respondent failed to file a motion to reduce his child support obligations, Sellers contacted another attorney, Charles Nathanson, Esq., to obtain the return of his client file and retainer fee. Id. at 39. Sellers,

however, could not afford to retain Nathanson without a refund of the retainer fee he had provided to respondent. Id. at 7. Consequently, on May 19, 2005, Sellers asked respondent for an update regarding his case, and warned respondent that, if he did not reply within five days, Sellers would retain another attorney. Id. at 8. Respondent again failed to reply. Ibid.

Throughout June and July 2005, Nathanson sent respondent letters and called his office requesting that he return Sellers's client file and refund his retainer fee. Id. at 8-9. Respondent, however, failed to reply. Ibid. Indeed, respondent altogether failed to file the motion to reduce Sellers's child support obligations, and he failed to refund his retainer fee until November 2005, after an arbitrator had ordered respondent's law firm to return those funds to Sellers in connection with the dissolution of respondent's firm.[1] Id. at 44. However, during the arbitration proceedings, respondent made little, if any, effort to obtain permission from his firm to issue a refund check to Sellers. Id. at 43-44. Respondent's law partner, however, would have provided respondent access to their firm's bank accounts to refund Sellers, had respondent made such a request. Ibid.

[1] Respondent was a partner at a firm in which the partnership agreement contained an arbitration provision. Accordingly, on June 7, 2005, the parties commenced binding arbitration. Rochman, DRB 09-307 at 17.

During the ethics hearing in that matter, respondent argued that he had no individual responsibility to Sellers because, in his view, Sellers was represented only by his law firm. Id. at 40-41. Consequently, we found that respondent failed "to understand his fundamental obligation to represent clients" and the "nature of his role in an attorney-client relationship." Ibid.

In determining that a reprimand was the appropriate quantum of discipline, we weighed, in aggravation, respondent's "combative behavior" and "scorched earth" tactics during the ethics hearings, wherein he repeatedly accused Sellers of being manipulated by his former law partner and associate; accused his former partner of engaging in dishonesty; launched personal attacks against the DEC presenter; and raised frivolous objections. Id. at 23-35. Based on respondent's "contumacious" conduct towards the witnesses and the presenter, we further determined to refer respondent to the Camden County Bar Association Committee on Professionalism for "an assessment" and, if appropriate, the appointment of a mentor to assist him in maintaining courtesy in his dealings with others. Id. at 2, 51.

The Court agreed with our recommended discipline and conditions and further required respondent to report to the Office of Attorney Ethics (the OAE) the results of his consultation, within six months. In re Rochman, 202 N.J. 133 (2010).

On May 16, 2012, the Court released respondent from the assessment and monitoring requirement imposed in Rochman I but ordered that he successfully complete a course in attorney professionalism approved by the OAE. In re Rochman, __ N.J. __ (2012).

We now turn to the facts of this matter.

Facts

In November 2016, Kareem Smith retained respondent in connection with personal injuries he sustained in an October 29, 2016 motor vehicle accident in the parking lot of a restaurant. On November 3, 2016, Kareem and respondent executed a retainer agreement, which stated that respondent would represent Kareem on a contingent fee basis. Although Kareen's then wife, Raekesha Moore-Smith, was present with Kareem during the initial consultation with respondent, she was not mentioned in the retainer agreement, which she did not sign.

During the ethics hearing, Raekesha claimed that, during the initial consultation, respondent did not explain what role, if any, she would have in Kareem's case. Consequently, following the initial consultation, Raekesha assumed that respondent would be representing only Kareem. Respondent, however, testified that, during the initial consultation, he explained to Raekesha

that she had "a derivative per quod claim"[2] based on the fact that she was forced to devote much of her personal time and financial resources to care for Kareem.[3]

Months later, in February or March 2017, Raekesha claimed that she contacted respondent and explained that her need to provide care to Kareem in connection with his injuries was "causing a conflict with [her] employment." Because she was forced to leave her job to provide care to Kareem, respondent explained that Raekesha could receive five or ten percent of Kareem's "settlement." Given that Raekesha and Kareem "were together," she did not view this arrangement "as a big deal because what's his was mine and what's mine was really his." Following their February or March 2017 discussion, Raekesha did "[n]ot fully" understand whether respondent represented her because she was not "familiar with the law and how it . . . worked."

Thereafter, throughout 2017, respondent sent correspondence to Kareem inquiring about the status of his medical treatment. Respondent also claimed that he and Kareem would keep "each other apprised of what was going on, quote/unquote, 'in the Smith World.'"

---

[2] "A per quod action is a claim for compensation for the loss of a spouse's companionship and services due to [a] defendant's harmful actions." Alberts v. Gaeckler, 446 N.J. Super. 551, 565 (Law Div. 2014).

[3] Raekesha was not involved with the motor vehicle accident.

On October 23, 2018, respondent filed, in the Superior Court of New Jersey, Burlington County, Law Division, a lawsuit on behalf of Kareem and Raekesha against (1) Brandon Trojak, the operator of the vehicle that struck Kareem's vehicle; (2) the restaurant (the restaurant), which had served alcohol to Trojak prior to the accident; and (3) Progressive Garden State Insurance Company (Progressive), their insurance carrier. In the complaint, respondent sought damages, on behalf of Kareem, based on Trojak's and the restaurant's alleged negligence and based on Progressive's alleged refusal to provide "full benefits" to Kareem. Additionally, respondent sought damages, on behalf of Raekesha, based on her alleged "loss of usual services and consortium of her husband, [Kareem]," whom Raekesha had "been required to provide special care and services . . . in her endeavor to help cure him of his injuries."

During the ethics hearing, Raekesha expressed her belief that respondent would represent her "best interests" in connection with the prosecution of the lawsuit. Respondent, however, failed to provide Raekesha with a written fee agreement setting forth the basis of his contingent legal fee, as RPC 1.5(b) requires. Respondent claimed that his failure in this respect was a "mistake."

In January 2019, respondent met with Kareem and Raekesha to discuss the legal theories underlying their lawsuit, including Raekesha's "per quod"

claim, and explained the discovery process and the avenues to obtain a potential settlement.

On November 26, 2019, William P. Cunningham, Esq., counsel for the restaurant, sent respondent a letter noting that, following a November 22 case management conference, the Honorable John E. Harrington, J.S.C. (ret.), had directed that Kareem and Raekesha be deposed on December 16, 2019.[4] However, by November 2019, Raekesha and Kareem's marital relationship had deteriorated and the parties had separated.[5] Because Raekesha felt that respondent could no longer "fairly" represent her interests, on December 12, 2019, she spoke with Saul J. Steinberg, Esq., and requested that he represent her to "protect" her "rights."

On December 12, 2019, following Steinberg and Raekesha's meeting, Steinberg informed respondent that Raekesha had requested that he "represent her interests" and that, although he was "just getting into the case," he would appear for Raekesha's deposition on December 16. Steinberg also advised

[4] Contrary to Cunningham's representations in his November 26, 2019 letter to respondent, Judge Harrington's case management order, dated November 22 and filed on December 3, 2019, required that the depositions of only Kareem and two employees of the restaurant take place on December 16, 2019. Judge Harrington's case management order did not set a date for Raekesha's deposition.

[5] During the ethics hearing, Raekesha claimed that she had directed Kareem to inform respondent of their separation. However, Raekesha could not recall whether Kareem ever notified respondent of their separation.

respondent that he would provide a substitution of attorney for respondent's signature.

In reply, respondent told Steinberg that, in his view, it was "an excellent idea that [you] come in for [Raekesha.] [P]lease send substitution of atty[.] Btw I demand [you] reimburse me half the costs I have advanced to date[.] I will provide [you with] a breakdown on Monday[.]"

Minutes later, Steinberg responded, stating that Raekesha's "claim is derivative of [Kareem's]. So your expenditures would have been made for him regardless of her status as the spouse. Also, I believe the expenses would be deducted off the top of any settlement so she will bear her proportionate share in that fashion. If there are future expenses she wants to incur . . . she will bear those costs."

Respondent, however, replied to Steinberg that his suggestion was "[n]ot acceptable[.] If your in your in[.] In fact[,] I believe so much in your litigation abilities there in deps on Monday you can take the lead[.] In fact[,] plan for it[.]"

In response, Steinberg informed respondent that he had:

> no intention in taking the 'lead' on anything. A[s] [Raekesha and Kareem] are now separated . . . I believe that by getting in just on her per quod claim I am avoiding a potential conflict of interest that you could have going forward. . . . Further[,] I will not stoop to the level of insults and nastiness. . . . [Raekesha] has no direct claim against the tortfeasors. So[,] if you believe that I should now pay half of the expenses, you may

> make an appropriate application to the [Superior] Court.
>
> [P-10.][6]

During the ethics hearing, Raekesha claimed that respondent took her decision to retain Steinberg "a little personal." Raekesha also understood that Steinberg would be present to represent her at the December 16 deposition. Steinberg, in turn, testified that it made "sense" that Raekesha "had separate representation for the purpose of the deposition" to ensure that her interests were protected by an attorney who was not "affected by representing anybody else." Steinberg also expressed his view that the case likely would "settle soon thereafter" and, if it did not, he would "take it from there." Finally, respondent testified that, until his December 12, 2019 e-mail discussion with Steinberg, he had "no knowledge" of "any marital discord" between Kareem and Raekesha.

Following respondent and Steinberg's December 12, 2019 e-mail exchange, on December 13, 2019, respondent claimed that Steinberg went to respondent's law office to inspect Raekesha's client file. Steinberg, however, could not recall visiting respondent's office.

[6] "P" refers to the DEC presenter's exhibits.

On December 16, 2019, Raekesha appeared for her anticipated deposition at the law office of Marshall Dennehy Warner Coleman & Goggin (Marshall Dennehy), which represented Trojak through its attorney, Barbara J. Davis, Esq.

During the ethics hearing, Raekesha claimed that, when she arrived at the law office for her deposition, respondent "walked right past" her and did not acknowledge her. When Steinberg arrived for the deposition, Raekesha claimed that Steinberg and respondent went into a conference room from which she overhead "raised" voices, "profanity," and "not-so-nice language."

Raekesha maintained that, following that discussion, Steinberg emerged from the conference room and told her "I'm going to leave" and that, if she did her "part," "it should be no problem." Raekesha further claimed that she spent "four hours" in the law office before she "decided to leave," without being deposed, because "no one had" "acknowledged" her.

Steinberg, in turn, testified that, after he had arrived for Raekesha's deposition, things "became very confrontational very quickly." Specifically, Steinberg claimed that respondent "immediately started yelling" about an unrelated incident between respondent's aunt and Steinberg's wife. According to Steinberg, that incident involved his wife neglecting to properly activate her parking brake while she was shopping at a grocery store. Steinberg claimed that, while his wife was shopping, her vehicle struck respondent's aunt's vehicle,

after which she left a note on the vehicle leaving her contact information. Respondent became involved in the dispute and would not agree to Steinberg's suggested autobody shop to repair his aunt's vehicle, prompting Steinberg to refer the matter to his automobile insurance company.

During his discussion with respondent at the Marshall Dennehy law office, Steinberg attempted to diffuse the situation by advising respondent that the matter involving his aunt was "over and done with" and that he was not "here for that." Steinberg also attempted to convey to respondent that he was "doing [him] a favor" by representing Raekesha in connection with her deposition, allowing respondent to avoid a potential conflict of interest. Steinberg, however, claimed that his statements did not "go over very well" with respondent. By the conclusion of their discussion, Steinberg voluntarily agreed to "leave" because he was "not in the mood for aggravation" and because he had agreed with respondent's view that he was not Raekesha's "attorney of record."[7]

Respondent disputed Raekesha's and Steinberg's versions of events. Specifically, respondent claimed that he had reminded Steinberg that he did not bring a substitution of attorney that would have allowed Steinberg to represent Raekesha during the deposition. Consequently, respondent told Steinberg that

[7] During the ethics hearing, Steinberg conceded that he neglected to bring a substitution of attorney to Raekesha's anticipated December 16, 2019 deposition.

he had no "legal right" "to participate." Respondent claimed that Steinberg had conceded that he did not bring a substitution of attorney and, after the parties unsuccessfully attempted to call Judge Harrington for advice regarding Steinberg's appearance, Steinberg "left" the deposition. Approximately thirty minutes later, when Judge Harrington returned the telephone call, respondent was unable to locate Steinberg, who had since left. Judge Harrington advised the parties to direct Steinberg to file a substitution of attorney and to complete the deposition of Raekesha either that evening or at a future date.

Respondent maintained that he did not discourage Steinberg's appearance at the deposition and that all he "wanted" from Steinberg "was a substitution of attorney." Respondent also claimed that he had no interaction with Raekesha and was unaware that she was at the Marshall Dennehy law office. Finally, respondent denied having discussed with Steinberg the alleged events underlying the motor vehicle incident at a grocery store.

Additionally, during the ethics hearing, Cunningham testified that, when Steinberg appeared for Raekesha's anticipated deposition, "there was some wrangling over whether" Steinberg could represent her yet. Cunningham, however, could not recall having been present for any discussions between Steinberg and respondent. Nevertheless, Cunningham recalled that Steinberg

had left the law office and that Raekesha's deposition could not be conducted due to time constraints.

According to Kareem's deposition transcript, Cunningham notified Judge Harrington, via a conference call with respondent and Davis, that Raekesha "was here and gone" and that there was "a schism" between respondent and Raekesha, whom Cunningham anticipated would be deposed on "another day." At the conclusion of the conference call, Judge Harrington issued a December 16, 2019 case management order, noting that respondent had appeared on behalf of both Kareem and Raekesha and requiring, among other things, that the depositions of Kareem and the two employees of the restaurant be completed by the end of the day.

Following the events on December 16, 2019, Steinberg had no further involvement in Raekesha's matter, and Raekesha no longer viewed Steinberg as her attorney.[8] Steinberg never executed a substitution of attorney, entered his appearance on behalf of Raekesha, or provided a written fee agreement to Raekesha. Steinberg also claimed and that he never accepted any legal fee from Raekesha based on his view that his fee was "irrelevant" for such a "short" representation.

[8] However, in March 2020, one of Steinberg's law partners began representing Raekesha in connection with her divorce from Kareem.

On December 17, 2019, at 11:31 a.m., Cunningham sent respondent a letter, via facsimile, with a copy to Davis, enclosing a notice to take Raekesha's deposition on January 4, 2020. In his letter, Cunningham told respondent that "[i]f you are not going to be her lawyer, please provide us with the name of her new lawyer and/or her address so we can issue a subpoena if she will be pro se."

On December 17, 2019, at 7:57 p.m., Raekesha sent respondent a letter, via e-mail and facsimile, advising him that she had sought Steinberg's legal assistance because of the breakdown in her marital relationship with Kareem. Raekesha also told respondent that "[t]he manner in which [he had] handled yesterday's events [was] unprofessional" because respondent had ignored her while she waited in the Marshall Dennehy law office for nearly four hours. Raekesha concluded by advising respondent that, based on her view that he no longer appeared to represent her best interests, he did "not and will not represent me in any case that I have an interest in. I will seek my own attorney to protect my interest and rights."

Following her termination of respondent, Raekesha did not ask respondent to return her client file because she was unaware that she had the right to "request records." Moreover, respondent failed to independently provide Raekesha with her client file, as RPC 1.16(d) requires.

On December 19, 2019, respondent sent Cunningham a letter, with a copy to Davis, stating, in relevant part, that his "representation of Raekesha . . . ha[d] been terminated."

On December 20, 2019, respondent sent Raekesha a letter, stating that he viewed her December 17, 2019 "correspondence to be baseless, which is consistent with your past behavior." Respondent further told Raekesha that, in his view, Steinberg had "interfered with contractual relations. Having said same, I acknowledge your termination of my firm and representation."

Respondent concluded by advising Raekesha that:

> [i]n light of the fact that Mr. Steinberg indicated at deposition that he was not, despite his prior representation, going to come into the matter, . . . I am herewith providing you with a Substitution of Attorney, based on your most recent communication, which I would ask that you execute and return in the envelope provided.
>
> [P-9.]

The substitution of attorney enclosed in respondent's letter noted that Raekesha would continue as a "pro se" plaintiff in the lawsuit.

During the ethics hearing, respondent claimed that, at the time he sent this letter to Raekesha, he anticipated that she would provide Steinberg with the substitution of attorney for his signature. Respondent, thus, characterized, as "a misspeak," his statement to Raekesha that Steinberg would not "come into the

matter." Respondent maintained that, when Steinberg left the Marshall Dennehy law office on December 16, Steinberg did not specifically state that he was not "coming back." Respondent, however, was unsure of Raekesha's intentions regarding her choice of attorney.

Subsequently, respondent prepared a motion to be relieved as counsel, given that he had not received an executed substitution of attorney relieving him as counsel. Respondent, however, did not file the motion.

On January 9, 2020, respondent, Cunningham, and Davis appeared for a status conference before Judge Harrington.[9] During the conference, Cunningham advised Judge Harrington that he wished to depose Raekesha. Respondent, in turn, told Judge Harrington that, despite his "mandate[]" that Raekesha appear for a deposition on December 16, 2019, Raekesha had left the Marshall Dennehy law office without being deposed.[10] Respondent also told Judge Harrington that he had sent a substitution of attorney to both Raekesha and to Steinberg, both of whom he claimed had "ignored" him.[11] Respondent

[9] The status conference originally was scheduled for January 3, 2020. However, because respondent was on vacation from December 31, 2019 through January 4, 2020, the conference was rescheduled for January 9, 2020.

[10] As noted above, Judge Harrington's November 22, 2019 case management order did not require that Raekesha be deposed on December 16, 2019.

[11] During the ethics hearing, respondent conceded that he never sent Steinberg a substitution of attorney and that he had "misspoke[n]" to Judge Harrington.

maintained that he no longer represented Raekesha because she had "terminated" him as counsel. Judge Harrington noted that, from his "respect, [respondent] no longer represent[ed]" Raekesha and required that she be deposed by January 24, 2020. To facilitate the scheduling of her deposition, respondent offered to provide Cunningham with Raekesha's last known address, in light of Cunningham's and Judge Harrington's understanding that Raekesha was now a pro se party. Finally, Judge Harrington required that Davis prepare a proposed case management order, for the Superior Court's signature, and to serve the executed version of the order upon Raekesha.

Raekesha did not participate in the status conference, as a pro se party, and she did not receive notice from respondent advising her that the conference had been scheduled for January 9, 2020. During the ethics hearing, respondent argued that Cunningham should have provided notice of the status conference to Steinberg, considering that Cunningham had requested the status conference and Cunningham's purported understanding that "Steinberg was coming in" to represent Raekesha.

Following the status conference, on January 9, 2020, respondent sent Raekesha a letter, via e-mail and regular mail, noting that he had "been relieved as [her] attorney of record" and that, if she was "going to represent [herself] and/or . . . be represented by anyone else, [she] must appear by no later than

January 24, 2020, and give deposition testimony if you['re] pursuing your matter."

Also on January 9, 2020, respondent sent Cunningham and Davis a letter, noting Raekesha's last known residential address and stating that Kareem would "accept $60,000 as his bottom line, there is no room for movement in the above noted matter. The offer is open until next Thursday, January 16, 2020, at 5:00 p.m."

During the ethics hearing, respondent claimed that he was "crystal clear" in his settlement discussions with Cunningham and Davis that he could negotiate only on behalf of Kareem because Raekesha had "terminated" him.

On January 10, 2020, respondent received, via e-mail, a signed substitution of attorney from Raekesha, who noted that she was proceeding pro se. Upon receiving Raekesha's signed substitution of attorney, respondent signed his name on the document, which he dated January 10, 2020.

On the same date, the Honorable Susan L. Claypoole, J.S.C., issued a case management order based on the January 9 status conference before Judge Harrington. In Judge Claypoole's case management order, she required that, by January 24, 2020, the parties complete the "[d]eposition of Raekesha . . . who is no longer represented by [respondent] and is self-represented." Because Judge Claypoole's order stated that Raekesha was proceeding pro se, respondent did

not file a motion to be relieved as counsel or Raekesha's executed substitution of attorney. Raekesha never received a copy of Judge Claypoole's January 10, 2020 case management order.

Additionally, on January 10, 2020, Cunningham sent Raekesha a letter and subpoena, via hand delivery, with copies to respondent and Davis, directing that she appear for a January 20, 2020 deposition at respondent's office.

On January 14, 2020, respondent sent Raekesha a letter, via e-mail, noting that he was unavailable to attend her deposition on January 20 and inquiring whether she was available on January 21.

During the ethics hearing, Raekesha claimed that Cunningham's subpoena would have been delivered to her parents' residential address, a location where she claimed her "mail was being sent." Raekesha, however, could not recall receiving the subpoena because her parents did not inform her when she received mail at their address, Nevertheless, Raekesha noted that she would usually "check" whether she received mail at her parents' house "once every two [or] three weeks." Raekesha further maintained that she learned of Cunningham's intent to depose her only after she had received respondent's January 14 e-mail noting his unavailability to attend her January 20 deposition.

On January 15, 2020, Cunningham sent Raekesha another letter and subpoena, via hand delivery, with copies to respondent and Davis, rescheduling

her deposition at respondent's law office for January 21, 2020, in light of respondent's unavailability on January 20.

Meanwhile, on January 16, 2020, respondent sent Kareem a letter, noting that the defendants had accepted his $60,000 settlement offer and directing that he come to respondent's office to sign the closing paperwork.

Also, on or before January 16, 2020, respondent began drafting a motion to "bifurcate and sever" Raekesha's "claim for consortium," given her separation from Kareem. In his draft motion, respondent claimed that he did "not believe" that Raekesha had "a viable claim," which respondent argued would now be "adverse to that of [Kareem's] claim." Respondent, however, declined to file the draft motion after the defendants had accepted Kareem's settlement offer.

On January 17, 2020, Judge Claypoole issued an "order of dismissal through settlement." The order was "prepared by the court" and noted the case caption as "Smith, Plaintiff vs. Trojak, Defendant." The order stated: "[t]he [c]ourt having been advised that the above entitled action[] has settled; [i]t is on this 17th day of January, 2020, hereby ORDERED that the above matter is dismissed without prejudice. The parties may file a stipulation or order setting forth the specific settlement terms."

During the ethics hearing, respondent claimed that the Superior Court "clearly understood that the only thing that I was dismissing was [Kareem's] claims, period." In his verified answer, respondent claimed that he had no authority to settle Raekesha's matter, given that he no longer represented her, and that "she maintained" her per quod claim despite the dismissal of Kareem's claim.

Also on January 17, 2020, Raekesha sent respondent an e-mail, in reply to his January 14 letter inquiring as to her availability on January 21, stating that she was unavailable for a deposition on January 21 and asking whether the deposition could be rescheduled. Having received no reply, on January 24, 2020, Raekesha sent respondent another e-mail inquiring whether her deposition had been rescheduled.

Meanwhile, on January 30, 2020, respondent, Cunningham, and Davis signed a "stipulation of dismissal with prejudice," which Davis had prepared. The stipulation listed, in the case caption, both Kareem and Raekesha – as plaintiffs – and Trojak, the restaurant, and Progressive – as defendants. The stipulation stated that "[t]he matter in difference in the above entitled action having been amicably adjusted by and between the parties, it is hereby stipulated and agreed that the same be and it is hereby dismissed without costs against

either party. With prejudice." Respondent executed the stipulation as the "[a]ttorney for [p]laintiff, Kareem Smith."[12]

During the ethics hearing, Cunningham testified that, although he and Davis viewed the settlement as a dismissal of Kareem's case, "the thinking" between himself and Davis "was that [Raekesha's] claim would be dismissed as well because it was derivative." Moreover, Cunningham and Davis viewed Raekesha's "ability to recover" in connection with her per quod claim as "compromised," given her "marital discord" with Kareem and her lack of an independent personal injury claim.

On February 3, 2020, Raekesha, who was unaware that the matter had settled, sent respondent an e-mail, inquiring whether her deposition had been rescheduled. Raekesha referred to respondent as "David" in the salutation of her e-mail. Minutes later, respondent replied to Raekesha, stating:

> First, it's Mr. Rochman! Second as you stated I don't represent you, and according to you never did, in so much it wasn't my notice and you walked out of a court ordered deposition[.] I cant help you w/ your inquiry. In the future I will not respond any further!
>
> [P-25.]

[12] According to the eCourts public access system, the last entry in Kareem and Raekesha's lawsuit was on January 30, 2020, when Davis filed the stipulation of dismissal. Raekesha's party status in that matter has been marked "settled."

During the ethics hearing, respondent apologized to the panel chair for the tone of his February 3, 2020 e-mail to Raekesha. Respondent, however, expressed his view that he had no "ethical duty" to inform Raekesha, his former client, that Kareem's matter had concluded. Rather, upon termination of his representation of Raekesha, respondent claimed that his only duty to Raekesha was to turn over her client file, upon her request.

Sometime in February 2020, Raekesha discovered that Kareem's case had settled after she had contacted Trojak's insurance company for information. Upon her discovery, Raekesha claimed that she contacted respondent's office, via telephone, and "was told to never call his office again." Respondent claimed that, during that telephone conversation, he had advised Raekesha that she had "attorneys" representing her in connection with her divorce and that Kareem had directed him not to "reveal" any "information" regarding his settlement.[13] Raekesha, however, maintained that she did not raise the issue of Kareem's settlement with Steinberg's law firm.

On August 28, 2020, Raekesha filed an ethics grievance against respondent, claiming that he prohibited Steinberg from participating in her

[13] Although the date of the telephone conversation is unclear based on the record before us, it appears that that the conversation took place in or around March 2020, given that, during that same month, Raekesha had retained one of Steinberg's law partners in connection with her divorce.

anticipated December 16, 2019 deposition, concealed the settlement of Kareem's matter from her, and allowed Kareem to retain the entire settlement amount. Raekesha further claimed that respondent was "insulting," "arrogant," and refused to provide her information regarding the settlement.

In September 2021, Raekesha and Kareem finalized their divorce, via a property settlement agreement, the terms of which are unclear based on the record before us.

The Parties' Written Summations

In her submissions to the hearing panel, the DEC presenter urged the imposition of the "highest quantum of discipline available" based on its view that Raekesha was "permanently damaged" by respondent's "scornful" and "inappropriate" actions.

Specifically, the presenter argued that respondent violated RPC 1.5(b), RPC 3.1, and RPC 3.3(a)(1) by filing a derivative claim on Raekesha's behalf, without having executed a formal retainer agreement. The presenter also maintained that respondent further violated RPC 3.1 by failing to file a motion to "bifurcate" Raekesha's claim from Kareem's matter, "once it became clear that [respondent] could no longer argue or negotiate on behalf of Raekesha." Additionally, the presenter argued that respondent further violated RPC

3.3(a)(1) based on the view that respondent misrepresented, in his settlement negotiations with Davis and Cunningham, that he was authorized to "act" on behalf of both Raekesha and Kareem. The presenter also maintained that respondent failed to include Raekesha in the settlement negotiations which, ultimately, resulted in the dismissal of her derivative claim.

The presenter also argued that respondent violated RPC 3.2 by prohibiting Steinberg from participating in Raekesha's anticipated December 16, 2019 deposition. The presenter claimed that respondent's "unpleasant" interaction with Steinberg "road-blocked" Steinberg's participation in the deposition. The presenter further maintained that respondent engaged in discourteous conduct towards Raekesha, in violation of RPC 3.2, by failing to (1) explain to Raekesha the effect of bifurcating her derivative claim; (2) advise her of the January 9, 2020 status conference; (3) clarify whether he still represented her; and (4) provide her with "information regarding her claim" and the conclusion of Kareem's claim. The presenter also alleged that respondent further violated RPC 3.2 by failing to treat Steinberg with courtesy and consideration and by failing to "insist" "upon a substitution of counsel or a motion to withdraw [as counsel]," resulting in confusion regarding Raekesha's understanding of her relationship with respondent.

Next, the presenter argued that respondent violated RPC 3.4(a) and RPC 3.4(c) by (1) failing to file a substitution of attorney or a motion to be relieved as counsel prior to the conclusion of the litigation; (2) concealing the January 9, 2020 status conference and settlement negotiations from Raekesha; and (3) refusing to speak with Raekesha regarding her status as a pro se litigant and co-plaintiff.

Additionally, the presenter argued that respondent violated RPC 1.2(a) by prohibiting Steinberg from participating in Raekesha's anticipated December 16, 2019 deposition and by failing to consult with Raekesha regarding the settlement negotiations and the conclusion of Kareem's matter.

Finally, the presenter claimed that respondent violated RPC 8.4(c) and RPC 8.4(d) by failing to (1) include Raekesha in the settlement negotiations of Kareem's matter; (2) file a substitution of attorney or a motion to be relieved as counsel clarifying his role in the litigation as to Raekesha; (3) advise the Superior Court regarding Raekesha's "lack of involvement in the conclusion of the case;" and (4) permit Steinberg's participation in Raekesha's anticipated December 16, 2019 deposition.

The presenter argued that respondent violated his duty to protect Raekesha's interests, as a former client, by failing to file a motion to be relieved as counsel between December 17, 2019, when Raekesha formally terminated

respondent as counsel, and January 9, 2020, when Judge Harrington expressly recognized, on the record during a status conference, that Raekesha was proceeding pro se. The presenter also maintained that, given Raekesha's status as a derivative claimant and the "unorthodox way" that Judge Harrington "released respondent from [Raekesha's] representation, any reasonable lawyer would have taken the extra step of clarifying his or her lack of continued representation with [Raekesha]" and provided her with information regarding upcoming court dates and settlement negotiations.

The presenter urged, in aggravation, respondent's failure to demonstrate any remorse and his 2010 reprimand, in Rochman I, wherein he engaged in unethically discourteous conduct during the hearing in that matter.

In his submissions to the DEC, respondent argued that he "discharged his obligations" as Raekesha's attorney until December 17, 2019, when she "unquestionably fired him." Respondent also emphasized that, during the January 9, 2020 status conference, Judge Harrington recognized that Raekesha was representing herself and memorialized her status as a pro se party in the January 10, 2020 case management order.

Respondent argued that he did not violate RPC 3.1 given that he aggressively litigated Kareem and Raekesha's legitimate claims against the defendants in good faith. Although respondent conceded that he failed to set

forth, in writing, the basis of his contingent legal fee to Raekesha, respondent claimed that, at best, he committed only a "technical violation" of RPC 1.5(b) because Raekesha was fully aware of her role in the litigation and was free to inspect respondent and Kareem's fee agreement, which respondent claimed that he "simply forgot to have" Raekesha execute.

Additionally, respondent argued that he did not violate RPC 3.3(a)(1) because he never represented that he had the authority to conduct settlement negotiations on behalf of Raekesha to Cunningham or Davis, both of whom were aware, by the conclusion of the matter, that respondent could negotiate only on behalf of Kareem. Respondent also maintained that he had no obligation to inform Raekesha of the settlement negotiations regarding Kareem's claim, given that such "negotiation[s] [did not] interfere with [Raekesha's] claim against the defendants." Respondent stressed that Raekesha was free to pursue her claim against the defendants but made the independent decision not to do so.

Respondent further alleged that he did not violate RPC 1.2(a) and RPC 3.2 because he never prohibited Steinberg's participation at Raekesha's anticipated December 16, 2019 deposition. Respondent emphasized that Steinberg, who did not bring a substitution of attorney to the deposition, independently decided to leave the Marshall Dennehy law office prior to Judge Harrington contacting the parties, via telephone, to provide instructions

regarding Steinberg's intended appearance. Respondent also alleged that there is no clear and convincing evidence demonstrating that he displayed an unethical lack of courtesy towards Steinberg. Although respondent argued that his February 3, 2020 e-mail to Raekesha constituted an "embarrass[ing]" "outburst," in his view, that "outburst" did not rise to the level of an ethics infraction.

Additionally, respondent denied having violated RPC 1.2(a), RPC 3.4(a), and RPC 3.4(c) based on his view that, by January 9, 2020, Cunningham, Davis, and the Superior Court were well aware of Raekesha's status as a pro se party and, thus, he had no duty to inform Raekesha of the developments and resolution of Kareem's matter or to file a substitution of attorney or a motion to be relieved as Raekesha's counsel. Respondent also emphasized that the settlement of Kareem's matter did not prejudice Raekesha's independent claim against the defendants. Finally, respondent denied having engaged in any acts of deception or conduct prejudicial to the administration of justice, in violation of RPC 8.4(c) and RPC 8.4(d).

Respondent urged the DEC to disregard his 2010 reprimand in Rochman I, given the passage of approximately eighteen years since his misconduct had concluded in that matter. Respondent also noted that, unlike in Rochman I, he

did not engage in any "overly abrasive" conduct during the ethics hearing in the instant matter.

The DEC Hearing Panel's Findings

The DEC hearing panel found that respondent violated RPC 1.5(b) by failing to set forth, in writing, the basis of his contingent legal fee in connection with his representation of Raekesha.

Additionally, the hearing panel found that respondent violated RPC 3.2 by failing to treat Steinberg with courtesy and consideration. Specifically, the panel observed that respondent's December 12, 2019 e-mail discussion with Steinberg "went beyond zealous advocacy" and "crossed over the line into demonstrating a clear lack of courtesy or consideration." The hearing panel found that respondent further violated RPC 3.2 by failing to advise Raekesha, "as a matter of courtesy and consideration," that Kareem's matter had been settled. Finally, the hearing panel found that respondent further violated RPC 3.2 by sending Raekesha his "flagrantly rude" February 3, 2020 e-mail in which he falsely accused Raekesha of "walking out of a court-ordered deposition" and concluded by stating that, "[in] the future, I will not respond any further!" The hearing panel found respondent's e-mail "highly offensive" and "beneath the dignity of the legal profession."

The DEC hearing panel, however, recommended the dismissal of the remaining charges of unethical conduct.

Specifically, the panel found that respondent's failure to execute a fee agreement with Raekesha did not render Raekesha and Kareem's lawsuit frivolous. Moreover, the hearing panel found no clear and convincing evidence demonstrating that respondent took any action on behalf of Kareem or Raekesha without a basis in law or fact. Consequently, the hearing panel recommended the dismissal of the RPC 3.1 charge.

Similarly, the hearing panel found that respondent's failure to execute a written fee agreement with Raekesha and the content of his settlement negotiations with Cunningham and Davis did not involve knowing false statements of material fact to a tribunal, as required to sustain an RPC 3.3(a)(1) charge. Additionally, although the hearing panel was "troubled" by Davis's "poorly worded" January 30, 2020 stipulation of dismissal and respondent's decision not to advise Raekesha of the dismissal of Kareem's claim, the panel did not find, by clear and convincing evidence, that respondent made any knowing false statements of material fact to a tribunal. Accordingly, the hearing panel recommended the dismissal of the RPC 3.3(a)(1) charge.

The DEC hearing panel also recommended the dismissal of the RPC 3.4(a) and RPC 3.4(c) charges, finding no evidence that respondent "altered or

destroyed" any documents having potential evidentiary value or took any action to obstruct Raekesha's "ability to obtain the files in the matter." By contrast, the panel noted that respondent allowed Steinberg to inspect Raekesha's client file in his office.

Moreover, the hearing panel found no clear and convincing evidence that respondent prohibited Steinberg from participating in Raekesha's anticipated December 16, 2019 deposition. The hearing panel also found no evidence of any settlement discussions between respondent, Cunningham, and Davis prior to the January 9, 2020 status conference, during which Judge Harrington expressly noted that Raekesha was a self-represented party. Because Raekesha was no longer respondent's client when he engaged in settlement negotiations on behalf of Kareem, the hearing panel did not find, by clear and convincing evidence, that respondent failed "to abide by a client's decisions." (Emphasis in original). Accordingly, the hearing panel recommended the dismissal of the RPC 1.2(a) charge.

Finally, although the hearing panel was "highly critical" of certain actions by respondent, the panel found no clear and convincing evidence that respondent's conduct violated RPC 8.4(c) and RPC 8.4(d) and, thus, recommended the dismissal of those charges.

In recommending the imposition of an admonition, the DEC hearing panel considered the passage of thirteen years since respondent's 2010 reprimand in Rochman I. The hearing panel viewed respondent's conduct in Rochman I as "more egregious" than his conduct in the instant matter, where respondent "readily admitted" his violation RPC 1.5(b) and "apologized for it." Additionally, unlike in Rochman I, where respondent's participation in the disciplinary process was "sharply criticized," the hearing panel found that, in the instant matter, respondent cooperated with disciplinary authorities and "comported himself properly during the [ethics] hearing." Nevertheless, the panel observed that respondent's conduct in this matter bore "some resemblance" to his unethically discourteous behavior in Rochman I and that, going forward, respondent must ensure that he adheres "to a level of professionalism expected of all members of the bar."

The hearing panel concluded by expressing its concerns regarding Steinberg's actions towards Raekesha. Specifically, the hearing panel found that Steinberg failed to explain to Raekesha the scope of his representation "in a formal retainer letter," resulting in Raekesha's confusion regarding the extent of Steinberg's representation. The hearing panel also noted that, during the December 16, 2019 deposition of other witnesses, Steinberg left the Marshall Dennehy law office "without making clear to" Raekesha "what had transpired

or what role, if any, he would take in the matter going forward." The panel, however, made no finding that Steinberg had engaged in any unethical conduct.

The Parties' Arguments Before the Board

At oral argument before us, the DEC presenter characterized respondent as the "gatekeeper" of the litigation, in which role respondent excluded Raekesha from settlement discussions and refused to promptly reply to her January 2020 e-mails concerning the rescheduling of her deposition. The presenter also expressed her view that respondent engaged in unethically discourteous conduct via his December 12, 2019 e-mails to Steinberg and his February 3, 2020 e-mail to Raekesha. The presenter concluded that discipline up to a reprimand is the appropriate sanction for respondent's misconduct.

In turn, respondent urged us to impose an admonition based on his concession that he failed to set forth, in writing to Raekesha, the basis of his contingent legal fee in connection with her per quod claim, in violation of RPC 1.5(b). Respondent also conceded that his February 3, 2020 e-mail to Raekesha constituted unethically discourteous conduct, in violation of RPC 3.2. However, respondent emphasized that, in his view, he had engaged in a civil discussion with Steinberg at the Marshall Dennehy law office in connection with Raekesha's anticipated December 16, 2019 deposition. Respondent also

expressed his view that his discourteous conduct was not more egregious than the admonished attorney in In re Gahles, 182 N.J. 311 (2005), who, as detailed below, used insulting language to describe an opposing party during oral argument on a custody motion.

Analysis and Discipline

Violations of the Rules of Professional Conduct

Following our de novo review of the record, we determine that the DEC hearing panel's finding that respondent's conduct was unethical is fully supported by clear and convincing evidence in connection with only one of the charges. Each violation is separately addressed below.

RPC 1.5(b)

RPC 1.5(b) requires a lawyer who has not regularly represented a client to set forth, in writing, the basis or rate of his legal fee "before or within a reasonable time after commencing the representation." Similarly, RPC 1.5(c) provides, in relevant part, that a "contingent fee agreement shall be in writing and shall state the method by which the fee is to be determined."

Here, respondent violated RPC 1.5(b) by failing to set forth, in writing, the basis of his contingent legal fee in connection with his representation of

Raekesha. Although respondent executed a written contingent fee agreement in connection with his representation of Kareem, respondent was obligated either to execute a separate contingent fee agreement with Raekesha or to amend his fee agreement with Kareem to explain to Raekesha how his fee would be calculated depending upon the outcome of her per quod claim. Had respondent explained the basis of his contingent legal fee in writing to Raekesha, it likely would have alleviated Raekesha's confusion regarding the scope of respondent's representation.

The formal ethics complaint alleged that respondent further violated RPC 1.5(b) by failing to explain to Raekesha, upon termination of the representation, "how any funds would be bifurcated." In our view, RPC 1.5(b), however, did not require respondent, upon termination of the representation, to explain how Raekesha's potential recovery may have been impacted by her separation from Kareem, whom respondent still represented. Consequently, we decline to find that respondent violated RPC 1.5(b) on that basis.

We determine to dismiss the remaining charges of unethical conduct.

RPC 3.1

RPC 3.1 provides, in relevant part, that an attorney "shall not bring or defend a proceeding, nor assert or controvert an issue therein unless the lawyer

knows or reasonably believes that there is a basis in law and fact for doing so that is not frivolous."

The formal ethics complaint alleged that respondent violated this Rule by filing the October 2018 Superior Court complaint on behalf of Kareem and Raekesha, without having executed a retainer agreement with Raekesha memorializing the representation.

However, as the DEC hearing panel correctly observed, respondent's failure to set forth, in writing to Raekesha, the basis of his contingent legal fee did not render Raekesha and Kareem's lawsuit frivolous. Indeed, despite the absence of a contingent fee agreement with Raekesha, nothing in the record suggests that respondent was not authorized to institute litigation on behalf of both Kareem and Raekesha.

The formal ethics complaint also alleged that respondent violated RPC 3.1 by failing to "bifurcate" Kareem's and Raekesha's respective claims "once it became clear [that respondent] could no longer argue or negotiate on behalf of" Raekesha.

However, it appears that, until respondent's December 12, 2019 e-mail discussion with Steinberg, he was unaware of "any marital discord" between Kareem and Raekesha. Following that e-mail discussion, respondent anticipated that Steinberg would appear, on behalf of Raekesha, for her December 16, 2019

deposition. Steinberg, however, elected to leave the Marshall Dennehy law office on December 16, 2019, while depositions of other parties were ongoing, after having failed to bring a substitution of attorney that would have allowed him to represent Raekesha. The next day, on December 17, 2019, Raekesha terminated respondent's representation after having left the Marshall Dennehy law office the day before without having been deposed. Three days later, on December 20, 2019, respondent sent Raekesha a letter "acknowledging" his termination and instructing her to complete a substitution of attorney form that he had prepared. Following respondent's year-end vacation, on January 9, 2020, all parties, except Raekesha, appeared for a status conference before Judge Harrington, after which respondent sent Raekesha a letter notifying her that he had been relieved as counsel. Respondent also sent Cunningham and Davis a separate, January 9, 2020 letter, noting that Kareem had offered to accept $60,000 to settle the litigation as to himself. One week later, on January 16, 2020, the defendants accepted Kareem's $60,000 settlement proposal.

Given the short timeframe between respondent's discovery of Kareem and Raekesha's separation and the settlement of Kareem's matter, it does not appear that respondent acted unreasonably by not filing a motion to bifurcate Kareem's personal injury claims from Raekesha's per quod claim. Indeed, during that same timeframe, it appears that respondent began drafting such a motion but

declined to file it after the defendants had accepted Kareem's settlement proposal. Had Kareem's matter not settled in January 2020, respondent would likely have been obligated to file such a motion to protect Kareem's interests, which were no longer aligned with those of Raekesha. However, respondent's decision not to file the motion, giving the timing of Kareem's settlement, was not unreasonable, and it clearly did not render the litigation frivolous, as required to sustain an RPC 3.1 charge. Consequently, we dismiss the RPC 3.1 charge.

RPC 3.3(a)(1)

RPC 3.3(a)(1) prohibits an attorney from knowingly making "a false statement of material fact or law to a tribunal."

The formal ethics complaint alleged that respondent violated this Rule by claiming, in his October 2018 Superior Court complaint, that he was Raekesha's attorney, "despite never formally engaging with her nor even prioritizing her claims equally."

However, as noted above, respondent's failure to set forth the basis of his contingent legal fee in writing to Raekesha did not mean that Raekesha never authorized respondent to file a per quod claim on her behalf. Indeed, despite her confusion regarding the scope of respondent's representation, Raekesha

appeared to understand the theory underlying her claim, and nothing in the record demonstrates that respondent filed the lawsuit on Raekesha's behalf without her permission. The record is also devoid of any facts indicating that respondent failed to properly prioritize her per quod claim.

Additionally, the formal ethics complaint alleged that respondent further violated RPC 3.3(a)(1) by misrepresenting, in his settlement negotiations with Cunningham and Davis, that he had the authority "to act" on behalf of both Raekesha and Kareem.

However, respondent's unrebutted testimony demonstrates that he was "crystal clear" in his settlement negotiations with Cunningham and Davis that he could negotiate only on behalf of Kareem. Moreover, by January 9, 2020, when respondent advised the defense attorneys of Kareem's $60,000 settlement proposal, both Cunningham and Davis understood that respondent represented only Kareem and that Raekesha was a self-represented party. Regardless of these uncontroverted facts, an attorney who makes false statements to opposing counsel during private settlement negotiations does not, as a matter of law, make a knowing false statement of material fact or law to a tribunal, as required to sustain an RPC 3.3(a)(1) charge.

Finally, the formal ethics complaint alleged that respondent violated RPC 3.3(a)(1) by "[r]epresenting that he continued to be authorized by [Raekesha] to file a stipulation of dismissal without" her knowledge.

Davis prepared the January 30, 2020 stipulation of dismissal, which contained all parties in the case caption and stated: "[t]he matter in difference in the above entitled action having been amicably adjusted by and between the parties, it is hereby stipulated and agreed that the same be and it is hereby dismissed without costs against either party. With prejudice." Respondent signed the stipulation as the "[a]ttorney for Plaintiff, Kareem Smith."

Although Davis's stipulation of dismissal did not, on its face, contain any outright misrepresentations of fact, the phrasing of the stipulation gave the misimpression that the entire matter had been settled. Moreover, it appears, based on Cunningham's testimony, that Cunningham and Davis viewed the dismissal of Kareem's case as an event that would trigger the dismissal of Raekesha's per quod claim. Indeed, upon Davis's filing of the stipulation, the Superior Court closed the entire matter as "settled" in the eCourts public access system, even though Raekesha's claim had not been properly adjudicated. However, given that respondent, who did not prepare the stipulation, signed his name only on behalf of Kareem, there is no clear and convincing evidence that respondent made any knowing false statements of material fact in the stipulation,

particularly when the Superior Court, Cunningham, and Davis all knew that respondent no longer represented Raekesha.

Consequently, we find no clear and convincing evidence that respondent made any knowing false statements of material fact to a tribunal and dismiss the RPC 3.3(a)(1) charge.

RPC 3.2

RPC 3.2 provides that "[a] lawyer shall make reasonable efforts to expedite litigation consistent with the interests of the client and shall treat with courtesy and consideration all persons involved in the legal process."

The formal ethics complaint alleged that respondent violated this Rule by refusing to permit Steinberg to participate in Raekesha's anticipated December 16, 2019 deposition, conduct which the DEC viewed as contrary to Raekesha's interests.

However, based on respondent's and Steinberg's testimony, it appears that respondent did not prohibit Steinberg's participation at Raekesha's anticipated deposition. Although respondent disputed Steinberg's version of events regarding their purported discussion of an unrelated automobile accident between their family members, it is undisputed that Steinberg independently decided to leave the Marshall Dennehy law office, prior to the anticipated

commencement of Raekesha's deposition, because he had agreed with respondent's view that he was not Raekesha's attorney of record, in light of his admitted failure to bring a substitution of attorney to the law office. Moreover, Steinberg's testimony that he had elected to "leave" the law office because he was "not in the mood for aggravation" does not demonstrate that respondent prohibited Steinberg's participation. Consequently, we determine that respondent's conduct did not constitute a "failure to expedite" litigation consistent with Raekesha's interests, as alleged in the complaint.

The formal ethics complaint alleged that respondent further violated RPC 3.2 by failing to file the January 10, 2020 substitution of attorney after Raekesha had terminated respondent's representation, on December 17, 2019, conduct which the DEC viewed as failing to act in Raekesha's interests.

Here, on December 20, 2017, three days after Raekesha formally terminated respondent as her attorney, respondent provided Raekesha with a substitution of attorney, which would have memorialized her decision to either proceed pro se or to obtain a new attorney. Raekesha, however, did not execute the substitution of attorney by the January 9, 2020 status conference, during which Judge Harrington acknowledged that respondent no longer represented Raekesha, who Judge Harrington viewed as a self-represented party. On January 10, 2020, Raekesha provided respondent with her signed substitution of

attorney, indicating that she was representing herself. Also on January 10, 2020, Judge Claypoole issued a case management order noting that respondent no longer represented Raekesha and that she was "self-represented."

In light of Judge Claypoole's January 10 order noting that respondent no longer represented Raekesha, respondent did not engage in any unethical conduct by not filing Raekesha's contemporaneously executed substitution of attorney. Moreover, the requirement of RPC 3.2 that an attorney make reasonable efforts to expedite the litigation consistent with the interests of a client was inapplicable to these facts, as a matter of law, given that Raekesha was no longer respondent's client.

The formal ethics complaint further alleged that respondent violated RPC 3.2 by failing to advise Raekesha of the settlement and dismissal of Kareem's matter and the January 10, 2020 case management order, conduct with the DEC viewed as a failure to treat Raekesha with courtesy and consideration.

Respondent, however, had no ethical obligation either to include Raekesha, his former client, in any settlement negotiations regarding Kareem's personal injury claims or to advise her that Kareem's matter had concluded via a stipulation of dismissal. Further, respondent knew, based on his participation in the January 9, 2020 status conference, that Judge Harrington had required Davis to serve the accompanying case management order on Raekesha after

respondent had provided Davis and Cunningham with her last known mailing address. The fact that Davis failed to serve the order on Raekesha, despite respondent providing Davis with Raekesha's address, did not render respondent's conduct unethical.

Although the DEC characterized, as unethically discourteous, respondent's failure to keep Raekesha apprised of the developments of the lawsuit following his termination as counsel, a violation of RPC 3.2 for failing to treat persons involved in the legal process with courtesy and consideration generally involves insulting or belligerent conduct. 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 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); In re Cubby, 250 N.J. 426 (2022) (censure for attorney, in a default matter, who engaged in excessively discourteous and insulting conduct spanning two consolidated

matters, including calling his adversary a "scumbag," labeling another adversary a "clown," and baselessly accusing two judges of being "corrupt").

Finally, the formal ethics complaint alleged that respondent violated RPC 3.2 by failing to demonstrate courtesy and consideration towards Steinberg.

Here, following Steinberg's December 12, 2019 meeting with Raekesha, Steinberg sent respondent an e-mail advising him of his intent to represent Raekesha in connection with her per quod claim. In reply, respondent claimed that it was "an excellent idea" that Steinberg represent Raekesha but "demand[ed]" that Steinberg reimburse respondent for "half the costs I have advanced to date[.] I will provide [you with] a breakdown on Monday[.]" Steinberg, however, refused to share the costs that respondent had incurred and, instead, suggested that Raekesha bear any future expenses in prosecuting her claim. Respondent replied that Steinberg's suggestion was "[n]ot acceptable[.] If your in your in[.] In fact[,] I believe so much in your litigation abilities there in deps on Monday you can take the lead[.] In fact[,] plan for it[.]"

Although respondent's e-mail communications with Steinberg were clearly unprofessional, we find that respondent's statements were not so insulting or belligerent that they constituted unethically discourteous conduct. Unlike the attorneys in Gahles, Geller, and Cubby, who were disciplined, in part, for making insulting and demeaning statements towards their adversaries,

respondent's statements were rude and unprofessional but did not impugn Steinberg's integrity.

Additionally, we find no clear and convincing evidence that respondent engaged in any unethically discourteous conduct during his interaction with Steinberg at Raekesha's anticipated December 16, 2019 deposition.

Specifically, Steinberg testified that, when he arrived at the Marshall Dennehy law office, things "became very confrontational very quickly" because respondent began "yelling" about an unrelated automobile accident between Steinberg's wife and respondent's aunt. Raekesha, in turn, testified that, while sitting in the hallway outside of the deposition room, she heard "raised" voices, "profanity," and "not-so-nice language." Respondent, however, contested Steinberg's and Raekesha's version of events and claimed that all he "wanted" from Steinberg "was a substitution of attorney."

Based on Raekesha's and Steinberg's testimony, it appears that a heated exchange took place between Steinberg and respondent at the Marshall Dennehy law office. However, the nature of respondent's remarks during that exchange are unclear based on the record before us. Moreover, in the context of contentious civil litigation, not every heated exchange between opposing counsel will result in unethically discourteous conduct. Consequently, because the nature of respondent and Steinberg's exchange at the Marshall Dennehy law

office is unclear, we find that respondent did not, by clear and convincing evidence, engage in any unethically discourteous conduct towards Steinberg.

Accordingly, we dismiss the charge that respondent violated RPC 3.2 in its totality.

RPC 3.4(a) and RPC 3.4(c)

RPC 3.4(a) provides, in relevant part, that a lawyer shall not "unlawfully obstruct another party's access to evidence or unlawfully alter, destroy[,] or conceal a document or other material having potential evidentiary value." In turn, RPC 3.4(c) provides, in relevant part, that a lawyer shall not "knowingly disobey an obligation under the rules of a tribunal."

The formal ethics complaint alleged that respondent violated these Rules by failing to properly "transition" Raekesha from a client to a pro se party. Specifically, the formal ethics complaint alleged that respondent excluded Raekesha from settlement negotiations in Kareem's matter, failed to file the January 10, 2020 substitution of attorney, and concealed the January 10, 2020 case management order and the settlement and dismissal of Kareem's matter from Raekesha.

However, as noted above, respondent neither had an ethical obligation to advise Raekesha, his former client, of the settlement and dismissal of Kareem's

matter nor to include her in the settlement negotiations with defense counsel. Moreover, given that Judge Claypoole's January 10, 2020 case management order expressly noted that respondent was no longer representing Raekesha and that she was a self-represented party, respondent had no ethical obligation to file Raekesha's contemporaneously executed substitution of attorney. Finally, respondent had no obligation to advise Raekesha of the January 10, 2020 case management order, particularly when respondent knew that Judge Harrington had directed Davis to provide Raekesha with that order in light of her status as a pro se party.

Consequently, we find that respondent neither unlawfully obstructed Raekesha's access to potential evidentiary material nor disobeyed an obligation under the rules of a tribunal and, thus, dismiss the RPC 3.4(a) and RPC 3.4(c) charges.

RPC 1.2(a)

RPC 1.2(a) provides, in relevant part, that a lawyer "shall abide by a client's decisions concerning the scope and objectives of representation . . . and . . . shall consult with the client about the means to pursue them."

The formal ethics complaint alleged that respondent violated this Rule by prohibiting Steinberg from appearing at Raekesha's anticipated December 16,

2019 deposition and by failing to consult with Raekesha regarding the settlement of Kareem's matter when he was "questionably not relieved as counsel given his failure to file the substitution of counsel."

As previously discussed, respondent did not prohibit Steinberg from participating in Raekesha's anticipated deposition. Rather, Steinberg independently elected to leave the Marshall Dennehy law office after he had agreed with respondent's position that he was not Raekesha's attorney of record, considering his admitted failure to bring a substitution of attorney to the law office.

Moreover, following the January 9, 2020 status conference, Cunningham, Davis, and the Superior Court clearly understood that respondent no longer served as Raekesha's attorney. Indeed, Judge Harrington noted, during the status conference that, from his "respect, [respondent] no longer represent[ed]" Raekesha. Consequently, following the January 9 status conference, respondent had no ethical obligation to consult with Raekesha, a former client, regarding the settlement and dismissal of Kareem's matter. Accordingly, we dismiss the RPC 1.2(a) charge.

RPC 8.4(c) and RPC 8.4(d)

RPC 8.4(c) prohibits an attorney from engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation. RPC 8.4(d) prohibits an attorney from engaging in conduct prejudicial to the administration of justice. It is well-settled that a violation of RPC 8.4(c) requires proof of intent. See In the Matter of Ty Hyderally, DRB 11-016 (July 12, 2011).

The formal ethics complaint alleged that respondent violated these Rules by (1) negotiating a settlement in Kareem's matter without Raekesha's authorization or participation; (2) failing to advise the Superior Court of Raekesha's lack of involvement in the conclusion of Kareem's matter; (3) failing to file the January 10, 2020 substitution of attorney; and (4) attempting to "thwart" Raekesha's right to have Steinberg present at her anticipated December 16, 2019 deposition.

However, as previously discussed, respondent never represented that he had the authority to negotiate a global settlement on behalf of both Kareem and Raekesha. Rather, by January 9, 2020, both Cunningham and Davis understood that respondent could negotiate only on behalf Kareem and that Raekesha had terminated respondent's representation and was a self-represented party. Additionally, the Superior Court was well aware, by January 9, 2020, that respondent represented only Kareem. In fact, Davis's January 30, 2020

stipulation of dismissal expressly noted that respondent served only as Kareem's attorney. Consequently, respondent had no ethical obligation to clarify the status of Raekesha's claim to the Superior Court following the settlement and dismissal of Kareem's matter.

Finally, as noted above, there is no clear and convincing evidence that respondent attempted to "thwart" Raekesha's right to retain another attorney, and respondent had no duty to file the January 10, 2020 substitution of attorney following the Superior Court's January 10, 2020 order expressly noting that he no longer represented Raekesha, whom the Superior Court acknowledged was a pro se party.

Because respondent's conduct did not prejudice the administration of justice by wasting judicial resources or result in any knowing acts of deception, we dismiss the charges that respondent violated RPC 8.4(c) and RPC 8.4(d).

In sum, we find that respondent violated RPC 1.5(b). We dismiss the charges that respondent violated RPC 1.2(a); RPC 3.1; RPC 3.2; RPC 3.3(a)(1); RPC 3.4(a); RPC 3.4(c); RPC 8.4(c); and RPC 8.4(d). The sole issue left for our determination is the appropriate quantum of discipline for respondent's misconduct.

Quantum of Discipline

Conduct involving the failure to memorialize the basis or rate of a fee, as RPC 1.5(b) requires, typically results in an admonition, even if accompanied by other, non-serious ethics offenses. See In the Matter of Robert E. Kingsbury, DRB 21-152 (Oct. 22, 2021) (the attorney failed to set forth the basis of his $1,500 flat legal fee in writing; the attorney also mishandled the client's matter for almost three years before the client retained substitute counsel to complete her matter; in mitigation, the attorney completely refunded the client, who suffered no ultimate financial harm; no prior discipline).

However, reprimands have been imposed when additional aggravating factors are present. See, e.g., In re Osterbye, __ N.J. __ (2022), 2022 N.J. LEXIS 659 (in a default matter, the attorney failed to memorialize his legal fee in connection with his clients' two small claims court lawsuits; the attorney had a prior 2020 reprimand, which gave him a heightened awareness of his obligation to cooperate with disciplinary authorities); In re Jaffe, 240 N.J. 433 (2020) (the attorney failed to set forth the basis of his fee in writing in connection with his client's driving while intoxicated (DWI) matter; the client advised the attorney, via e-mail, that she could pay a total of $1,000 for the representation; in reply, the attorney alleged that he was "happy to start defending [her];" thereafter, the client provided the attorney an initial $500 check toward the representation; the

attorney, however, informed the client that he could not negotiate the check, which he claimed should have been made payable to an expert; the client maintained that she believed the cost of the expert was included in the attorney's $1,000 fee and was unwilling to spend any additional funds; ultimately, the client declined to hire an expert and, through the attorney, pleaded guilty to DWI; the attorney also failed to comply with the DEC's requests to produce the client file; the attorney had a prior 2017 censure, a 2012 reprimand, and a 1998 reprimand); In re Yannon, 220 N.J. 581 (2015) (the attorney failed to memorialize the basis of his fee in connection with his client's two real estate transactions; discipline was enhanced based on the attorney's prior 2013 one-year suspension for his involvement in an illegal property flip); In re Gazdzinski, 220 N.J. 218 (2015) (the attorney failed to prepare a written fee agreement in a matrimonial matter; the attorney also failed to comply with the DEC's repeated requests for the entire client file and improperly entered into an agreement with the client to dismiss the ethics grievance, in exchange for the resolution of fee arbitration between them; the attorney displayed an "obvious" lack of contrition at the ethics hearing but had no prior discipline).

Here, unlike the reprimanded attorney in Jaffe, whose failure to properly communicate his legal fee directly impacted the course of the representation, respondent's failure to set forth, in writing to Raekesha, the basis of his

contingent legal fee did not appear to impact the litigation regarding Raekesha's per quod claim.

Nevertheless, although not charged in the formal ethics complaint, respondent failed to protect Raekesha's interests upon termination of the representation, as RPC 1.16(d) requires, in at least two respects. See In re Steiert, 201 N.J. 119 (2014) (evidence of unethical conduct contained in the record can be considered in aggravation, even though such unethical conduct was not charged in the formal ethics complaint).

First, following Raekesha's December 17, 2019 letter terminating respondent as counsel, he altogether failed to return Raekesha's client file, as RPC 1.16(d) requires. The fact that Raekesha did not independently request that respondent return her file, given her unfamiliarity with her rights as a client, did not excuse respondent's transgression.

Second, respondent failed to notify Raekesha of the January 9, 2020 status conference before Judge Harrington. Although Raekesha had terminated respondent as counsel on December 17, 2019, respondent remained her attorney of record until January 9, 2020, when Judge Harrington acknowledged, on the record, that respondent no longer represented her. Because respondent remained Raekesha's attorney of record until January 9, 2020, respondent should have known that Raekesha would not individually have received scheduling notices

from the Superior Court or correspondence from Cunningham and Davis, who, before January 9, 2020, knew that Raekesha had terminated respondent but were unaware of her contact information or whether she had retained new counsel. Consequently, respondent should have advised Raekesha of the January 9, 2020 status conference in order to have allowed her to participate as a self-represented party. See Strauss v. Fost, 209 N.J. Super. 490, 497-98 (App. Div. 1986) (an attorney who had been terminated by his client never formally withdrew from the representation and, thus, remained the client's attorney of record in the litigation; following the attorney's termination as counsel, he received a notice of motion to dismiss his client's claim; citing RPC 1.16(d), the Appellate Division found that the attorney's "decision to do nothing was palpably incorrect" and that he should have notified his former client of the motion, given that there was "no indication" that the client had been served personally with the motion or had otherwise retained new counsel "with respect to [the] motion").

However, there is no clear nexus between the improper adjudication of Raekesha's per quod claim and respondent's failure to protect her interests upon termination of the representation.

Specifically, although respondent failed to return Raekesha's client file upon termination of the representation, respondent allowed Steinberg to inspect

Raekesha's file, at respondent's office, on December 13, 2019, three days before Steinberg unilaterally abandoned his representation of Raekesha by leaving the Marshall Dennehy law office, without advising Raekesha of whether he intended to continue the representation. Indeed, Raekesha testified that Steinberg told her only that he was "going to leave" the Marshall Dennehy law office and that, if she did her "part," "it should be no problem."

Moreover, despite respondent's failure to advise Raekesha of the January 9, 2020 status conference, once it became clear, during that conference, that Raekesha was a self-represented party, the Superior Court directed that Davis prepare and serve Raekesha with a case management order reflecting her status as a pro se party. Although Davis failed to follow the Superior Court's directive, respondent independently advised Raekesha, via a January 9, 2020 letter, that he had been relieved as her attorney of record and that, if she wished to proceed pro se, she would need to submit to a deposition by January 24, 2020, as the Superior Court required.

Further, despite Cunningham and Davis's view that, upon settling Kareem's personal injury claims, Raekesha's per quod claim would also "be dismissed . . . because it was derivative," the fact remains that Raekesha may have had a viable claim for distinct damages, prior to her marital separation, during the timeframe when she was forced to leave her employment to care for

Kareem. Indeed, "[a]lthough a spouse's consortium, per quod claim is derivative and dependent upon the other spouse prevailing in his or her suit for personal injuries, the claim remains independent in that separate and distinct damages are available to the spouse making such claim." Gaeckler, 464 N.J. Super. at 566 (citing Hacuk v. Danclar, 262 N.J. Super. 225, 227 (Law Div. 1993)).[14]

Respondent, however, who was not Raekesha's attorney of record as of January 9, 2020, was not responsible, under the Rules of Professional Conduct, for the improvident adjudication of her per quod claim. Moreover, once Raekesha became aware, in February 2020, that the entire lawsuit had been dismissed, she declined to raise that issue with Steinberg's law partner, who began representing her, in March 2020, in connection with her divorce from Kareem. Additionally, it is unclear, based on the record before us, whether Kareem's $60,000 settlement was factored into Raekesha's September 2021 property settlement agreement with Kareem. Consequently, despite the confluence of factors that resulted in the improper adjudication of Raekesha's per quod claim, it is unclear whether Raekesha suffered any ultimate financial harm.

[14] A per quod claim, however, "can rise no higher than the personal injury claim of the other spouse." Tichenor v. Santillo, 218 N.J. Super. 165, 173 (App. Div. 1987).

In aggravation, respondent received a 2010 reprimand, in Rochman I, albeit for unrelated misconduct that occurred between 2004 and 2005. However, in that matter, because respondent had engaged in "scorched earth" tactics and "combative behavior" during the 2007 and 2008 ethics hearing, the Court referred respondent to the Camden County Bar Association Committee on Professionalism for an assessment and, if appropriate, the appointment of a mentor to assist him in maintaining courtesy in his interactions with others. In 2012, the Court terminated respondent from that "assessment and monitoring requirement" but required him to complete an OAE approved course in attorney professionalism.

Based on the Court's condition in Rochman I, respondent clearly had a heightened awareness of his ethical obligation to maintain courtesy in his dealings with others. Although respondent's unprofessional interactions with Steinberg in the instant matter did not raise to the level of unethical conduct, in our view, respondent's rude behavior towards Steinberg demonstrates that his experiences with the Camden County Bar Association have not made a lasting impression on him. Further, although not charged in the formal ethics complaint, respondent's unprofessional behavior extended to Raekesha, a former client. Specifically, on February 3, 2020, respondent received an e-mail from Raekesha requesting information on whether her deposition had been rescheduled; in

reply, respondent berated her for addressing him as "David;" reminded her that she had terminated him as counsel; accused her of "walk[ing] out of a court ordered deposition;" and stated that "[i]n the future[,] I will not respond further!"

However, we find that respondent's disciplinary history and unprofessional behavior in this matter are insufficient to enhance the discipline from an admonition to a reprimand. Specifically, respondent's disciplinary history is not as severe as the reprimanded attorneys in Jaffe, who had a recent censure and two prior reprimands, and Yannon, who had a recent one-year suspension. Moreover, unlike the reprimanded attorneys in Gazdzinski, who failed to cooperate with disciplinary authorities and improperly attempted to negotiate the dismissal of an ethics grievance, and Osterbye, who failed to file an answer to the formal ethics complaint, respondent did not commit any additional charged ethics infractions or allow this matter to proceed as a default.

Conclusion

In conclusion, consistent with applicable disciplinary precedent for failing to memorialize the basis of a legal fee, we determine that an admonition is sufficient discipline to protect the public and preserve confidence in the bar.

Chair Gallipoli and Member Menaker voted to impose a reprimand.

Members Joseph and Rivera were absent.

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

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

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

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of David S. Rochman
Docket No. DRB 23-138

Argued: September 21, 2023

Decided: December 6, 2023

Disposition: Admonition

Members	Admonition	Reprimand	Absent
Gallipoli		X	
Boyer	X		
Campelo	X		
Hoberman	X		
Joseph			X
Menaker		X	
Petrou	X		
Rivera			X
Rodriquez	X		
Total:	5	2	2

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