SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
Docket No. DRB 24-039
District Docket No. XI-2022-0009E

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In the Matter of Dennis Todd Hickerson-Breedon
An Attorney at Law

Argued
April 25, 2024

Decided
August 19, 2024

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Steven Stadtmauer appeared on behalf of the
District XI Ethics Committee.

Respondent appeared pro se.

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## **Introduction**

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

This matter was before us on a recommendation for a reprimand filed by the District XI Ethics Committee (the DEC). The formal ethics complaint charged respondent with having violated RPC 1.1(a) (engaging in gross neglect); RPC 1.3 (lacking diligence); RPC 1.5(b) (failing to set forth, in writing, the basis or rate of the legal fee); RPC 3.2 (two instances – failing to expedite litigation and to treat with courtesy and consideration all persons involved in the legal process); RPC 3.3(a)(1) (making a false statement of material fact to a tribunal); and RPC 3.5(c) (engaging in conduct intended to disrupt a tribunal).

For the reasons set forth below, we determine that a reprimand, with a condition, is the appropriate quantum of discipline for respondent's misconduct.

## **Ethics History**

Respondent earned admission to the New Jersey bar in 2018 and to the New York bar in 2021. He has no disciplinary history.

During the relevant timeframe, between June 2018 and December 2020, respondent practiced law as an associate at Hunt, Hamlin and Ridley, Counselors

at Law (the HHR Firm). Since December 2020, he has maintained his own practice of law in Paterson, New Jersey.

## Facts

### *Background*

In May 2018, F.W., through her attorney, filed a complaint for divorce, in the Superior Court of New Jersey, Essex County, against her husband, E.B., with whom she had a minor child.[1]

In June 2018, E.B. retained the HHR Firm to represent him in a domestic violence matter. Respondent, who recently had earned admission to the New Jersey bar, was primarily responsible for the representation. On or around June 14, 2018, respondent appeared in court with E.B. in connection with the domestic violence matter, following which the restraining order against E.B. was dismissed. Additionally, while the parties were at the courthouse, F.W.'s attorney served E.B. with a copy of F.W.'s divorce complaint.

On July 18, 2018, following the conclusion of the domestic violence matter, respondent sent E.B. an e-mail enclosing a copy of the divorce complaint; E.B., however, remained pro se in connection with the matrimonial

[1] Given the domestic violence allegations underpinning this client matter, we have anonymized E.B. and F.W.'s names in our decision. See R. 1:38-3(c)(12).

matter.

Around January 2019, the Superior Court directed F.W., through her new attorney, Barbara Daniels, Esq., to provide $4,000 to E.B. to allow him to retain counsel in connection with the matrimonial matter. During the ethics hearing, E.B. claimed that the Superior Court had ordered such relief because his income differed from F.W.'s.

*The Matrimonial Fee Agreement*

On January 19, 2019, respondent and E.B. executed a written fee agreement (the Fee Agreement) through which the HHR Firm agreed to represent E.B. in connection with his ongoing divorce proceeding. The Fee Agreement provided that the HHR Firm would:

> represent [E.B.] in this matter for a total fee of $4,000. A payment of $4,000 will be paid to the [HHR Firm] by the office of Attorney Barbara Daniels. The fee is non-refundable[[2]] and reflects the total cost [E.B. would] be required to pay to [the HHR Firm] for purposes of its representation . . . in the above-captioned matter.
>
> [Ex.A.][3]

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[2] R. 5:3-5(b) prohibits a retainer agreement, in civil family actions, from including "a provision for a non-refundable retainer."

[3] "Ex.A" through "Ex.J" refers to the presenter's exhibits.

The Fee Agreement further provided that E.B. could be required to pay certain expenses "in connection with the defense of [his] case," including, among other things, expert fees, court costs, and "extraordinary photocopying, long-distance telephone and postage expenses."

The Fee Agreement also provided that E.B.'s "failure to pay the entire amount due and owing to [the HHR Firm would] result in the filing of an action against [him] to recover any amount due and owing on this debt." In that vein, E.B. agreed to permit the HHR Firm, "by virtue of signing this document to enter a voluntary judgment against [him] for the full amount owing, less any payments which [he] ha[d] made."[4] Finally, the Fee Agreement stated that E.B. "acknowledge[d] that [he was] aware of the hazards" and "high costs of litigation," the outcome of which was not "guarantee[d]."

The Fee Agreement failed to include the required R. 5:3-5(a) "Statement of Client Rights and Responsibilities in Civil Family Actions." Specifically, pursuant to that Rule, the Fee Agreement failed to state that respondent was, as he admitted, the attorney primarily responsible for E.B.'s representation. Moreover, the Fee Agreement failed to specify respondent's hourly billing rate

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[4] The Fee Agreement's provisions concerning the filing of a lawsuit and the entry of a judgment against E.B. violates the pre-action notice requirements of R. 1:20A-6 (prohibiting the filing of a lawsuit to recover a legal fee until the expiration of thirty days after a client receives, from his attorney, a written pre-action notice advising the client of his right to request fee arbitration to resolve the fee dispute).

or state whether the $4,000 “total fee” constituted an initial retainer fee. Further, the Fee Agreement failed to (1) include a description of the anticipated legal services, including those not encompassed by the Agreement, (2) state the frequency in which the HHR Firm intended to submit invoices and when the Firm required E.B. to make payments, and (3) note the hourly billing rates of all other attorneys who may provide legal services. Following respondent’s and E.B.’s execution of the Fee Agreement, E.B. provided a $4,000 check to the HHR Firm toward the legal fee.

During the ethics hearing, E.B. testified regarding his confusion concerning the scope of respondent’s representation. Specifically, at some point during the representation in the matrimonial action, E.B. was forced to represent himself in connection with the sale of his and F.W.’s marital residence. E.B., however, described the sale as a “non-arm’s length transaction” due to respondent’s refusal to represent him in that matter while Daniels continued to represent F.W. During cross-examination, when respondent told E.B. that he had not retained the HHR Firm to handle the real estate transaction, E.B. replied “[d]id I have to retain [you] when that asset was [part] of a divorce proceeding?”

*The Pendente Lite Child Support*

In his verified answer, respondent maintained that, on February 28, 2019, E.B. executed a case information statement indicating that he was employed by "CVR Associates." During the ethics hearing, E.B. testified that, although he recalled "signing a document with [his] income," he had become unemployed and had provided respondent with "a document stating why [he] was let go." E.B. further claimed that he "may have" provided respondent with information regarding the amount of his weekly unemployment benefits. Following his loss of employment, E.B. became a full-time student and secured student loans to attend a university.

On March 7, 2019, based on the content of E.B.'s case information statement, F.W. filed a motion seeking pendente lite child support from E.B. Upon reviewing that motion, respondent maintained that E.B. "emphatically suggested that he was now unemployed." Thereafter, respondent claimed that he repeatedly requested that E.B. provide "supporting documents to show that [he] was not working and/or had a defense as to why he should not be responsible for pendente lite child support." Based on his contention that E.B. did not provide him any such "documentation," respondent declined to file a reply to F.W.'s motion because, in his view, he was "not equipped with any information to make a meritorious argument in support of [E.B.'s] interest."

By contrast, E.B. maintained that he promptly provided respondent with written proof that he had lost his job. Moreover, E.B. contended that, upon filing his 2018 tax returns, he provided those documents to respondent. Further, he claimed that he had provided respondent with information concerning his student loans, credit card expenses, and his full-time enrollment at a university.

On May 24, 2019, following respondent's failure to file any reply to the motion, the Honorable Marcella Matos Wilson, J.S.C., issued an order granting F.W.'s unopposed application. Pursuant to the order, E.B. was required to pay $1,000 in monthly pendente lite child support, plus $250 per month toward any arrears. The order also required E.B. to pay $2,772.50 in counsel fees to Daniels.

Following the issuance of Judge Wilson's order, E.B. told respondent that he could not afford to pay $1,000 in monthly child support because he received approximately $1,100 in monthly unemployment benefits, leaving him just over $100 per month by which "to live." Additionally, after his unemployment benefits expired, E.B. began accruing substantial child support arrears which, eventually, totaled approximately $27,000. Consequently, E.B. maintained that he made "countless" requests that respondent file a motion to reduce his pendente lite child support payments.

In his verified answer and during the ethics hearing, respondent maintained that, although E.B. had inquired whether his child support obligation

could be reduced, E.B. never provided "any proofs to make a meritorious motion for a reduction of the pendente lite support order." Specifically, respondent noted that, despite E.B.'s insistence that he was unemployed, he never provided "any corroborating information that he was in fact unemployed." Conversely, during the ethics hearing, E.B. testified that he had provided respondent with documentation concerning his unemployed status "several times," including at the outset of the representation.

In July 2020, respondent met with E.B. at the HHR Firm, where he presented E.B. with a draft cover letter, notice of motion, and an incomplete certification in support of a potential application to reduce E.B.'s child support obligation. The entire incomplete certification, executed by E.B. on July 7, 2020, stated only:

> I hereby certify that I, [E.B.], acknowledged the genuineness of this signature and that the original documents or a copy with an original signature affixed will be filed if requested by the court or a party.
>
> I further certify that the facts and information contained within the affixed Certification are true to the best of my knowledge and belief.
>
> [Ex.E.]

Respondent maintained that he could not draft a "full certification" because, in his view, E.B. had not asserted "meritorious facts to set forth before the [Superior] Court as to why a modification [of child support] should be

granted." Consequently, respondent never filed the draft motion based on his claim that E.B. had not provided him with documentation to demonstrate that he was unemployed and a full-time student.

On December 2, 2020, respondent left his employment with the HHR Firm and began operating his own practice. Respondent continued to represent E.B. in connection with his matrimonial matter but failed to provide E.B. with a written fee agreement setting forth the basis or rate of his new firm's legal fee. Respondent, however, maintained that he never received any fees from E.B. following the opening of his own law practice.

*The March 24, 2021 Status Conference*

On March 24, 2021, the parties appeared, via telephone, for a status conference before Judge Wilson.

During the status conference, respondent became argumentative with Judge Wilson regarding whether he had filed a response to F.W.'s notice to produce documents. Specifically, respondent repeatedly interrupted Judge Wilson, claiming that he never had received any e-mails or telephone calls from Judge Wilson's staff regarding the notice to produce. Respondent also accused the Judge, in a combative tone, of (1) engaging in a "bullying match" "every time [he was] on the line" with her, (2) prohibiting him from answering her

questions, and (3) refusing to allow him "to make a proper record." Consequently, Judge Wilson cautioned respondent not to speak over her and that "the only bullying match going on is with you."

Additionally, when Judge Wilson directed that respondent wait his turn to speak and advised him that he was being "disrespectful" for interrupting her, he interjected by declaring that "this is a free court," and that he was "not a slave." Respondent also proclaimed that he was "making a record for my client litigating a case and you're saying talk when I tell you to talk," in reply to which Judge Wilson reminded respondent that he was "in a court of law." Immediately thereafter, respondent repeatedly accused Judge Wilson of "not talking to Ms. Daniels like that," following which Judge Wilson reminded respondent that Daniels had not interrupted the proceedings.

Further, when Judge Wilson told the parties that she had heard a "television" playing in the background, respondent maintained that he was "on two records right now." In reply, Judge Wilson again reminded respondent that "this is a court proceeding."

Finally, during the status conference, respondent maintained that E.B. "was stuck paying pendente lite" child support and that he had filed a motion to modify that support award approximately two weeks earlier. Judge Wilson, however, advised respondent that she had not received any such motion.

In his verified answer and during the ethics hearing, respondent acknowledged that he had not filed a motion to modify E.B.'s pendente lite child support obligation, as he had told Judge Wilson; however, he claimed that he did not realize that he had "misspoken" until he had reviewed the formal ethics complaint underlying this matter. Respondent characterized his conduct as a "non-malicious misrepresentation of fact," given his view that, if he "was going to be untruthful to the court . . . it would seem that [he] would indeed [have] attempt[ed] to cover up the misrepresentation by subsequently filing the motion." Further, respondent maintained that, on February 20, 2021, he had assisted another attorney in preparing a motion to modify a custody arrangement in connection with an unrelated post-judgment matrimonial matter. Although he conceded that he did not have a large case load at that time, respondent noted that he "quite possibly mixed-up filings and/or work done" on the unrelated client matter.

*F.W.'s Motion to Strike and E.B.'s Motion to Modify Child Support*

In July 2021, F.W. filed a motion to strike E.B.'s answer for failing to comply with discovery obligations. On July 22, 2021, respondent filed opposition to the motion, claiming that E.B. was "in a grave financial crisis" due to his unemployment. In support of his claim, respondent appended to his letter

brief excerpts of documents that he maintained E.B. had provided him only one week earlier, despite his "several" prior "requests" to E.B. for those materials. In his brief, respondent noted that he could not "proffer a reason as to why" E.B. had not provided "the documentation . . . on a more timel[y] basis." The documents appeared to reflect that E.B. (1) had an inactive real estate license, (2) had accrued $161,475 in combined student loan, automobile loan, and credit card debt, and (3) owed $2,598.14 in overdue federal taxes. Respondent also appended E.B.'s unsigned and uncertified letters, addressed "to whom it may concern," indicating that he had no active bank accounts, was unemployed, and had no source of income other than his student loans.

During the ethics hearing, respondent acknowledged that the unsigned letters attached to his brief failed to comply with R. 1:6-2(a) and R. 1:6-6. Specifically, those Rules provide, in relevant part, that motion responses containing "facts not of record or . . . subject of judicial notice . . . shall be accompanied by affidavit[s]" "made on personal knowledge . . . to which the affiant is competent to testify and which may have annexed thereto certified copies of all papers or parts thereof referred to therein." Respondent represented that he filed his non-compliant opposition brief, which alleged uncertified facts regarding E.B.'s "financial crisis," in an attempt to prevent the court from striking E.B.'s answer. Further, respondent claimed that, although his office had

received E.B.'s documents on July 16, 2021, he did not personally "discover" those materials until July 22, the date he filed the brief. Accordingly, to adhere to the deadline to oppose F.W.'s motion, respondent maintained that he filed the brief, without E.B.'s required certification concerning his precarious financial situation, because he "had no opportunity for [E.B.] to come in physically and sign a certification."

On November 5, 2021, Judge Wilson denied F.W.'s motion to strike but declared E.B. in violation of litigant's rights for failing to pay his child support obligation. In her order, Judge Wilson directed that, effective December 1, 2021, a bench warrant for E.B.'s arrest would be issued if he failed to make two consecutive child support payments. Respondent maintained that Judge Wilson had informed him, at some point, that E.B.'s unsigned letters in opposition to F.W.'s motion to strike did not satisfy the requirements of R. 1:6-2(a) and R. 1:6-6.

Meanwhile, in October 2021, E.B. filed a pro se motion to modify his child support obligation based on his fear that he "was going to get locked up" for failing to pay child support. E.B. noted that he was forced to file the motion because "years had gone by" without respondent filing such an application, despite his "countless" requests for such relief. On October 22, 2021, Judge Wilson denied E.B.'s motion because respondent remained his attorney of

record. In her order, Judge Wilson stated that the court twice had attempted, unsuccessfully, to contact respondent to confirm his representation of E.B. Following the denial of E.B.'s pro se motion to modify his child support obligation, respondent declined to file a motion for such relief, based on his view that he did not "have any documents to support" that application.

On November 10, 2021, respondent informed E.B. that he would file, by November 15, a motion for reconsideration of E.B.'s pro se application, provided that E.B. submit "proof" of his unemployed status as a full-time student. Thereafter, respondent claimed that, "for the first time ever," E.B. had provided him documentary proof concerning his enrollment as a full-time student. However, respondent declined to file the motion for reconsideration because, at the time he claimed he had received such documentary proof, the parties were scheduled to attend a December 2, 2021 settlement conference, which, in respondent's view, could have "rectified" the issues concerning E.B.'s child support. During the ethics hearing, respondent claimed that he could not recall whether he had advised E.B. that he no longer intended to file a motion for reconsideration.

In late November or early December 2021, respondent successfully moved to withdraw from the representation based on his claim that E.B. had

"threatened" him in front of F.W. and Daniels. Thereafter, in December 2021, E.B.'s divorce matter concluded.

*Respondent's Conduct During the Ethics Hearing*

During the ethics hearing, respondent repeatedly engaged in overly combative and unprofessional behavior, both while cross-examining E.B. and while addressing the hearing panel chair.

Specifically, on numerous occasions, when E.B. sought clarification from respondent regarding the scope of his cross-examination questions, respondent would interject that he was "asking the questions" and that "these are my questions, not yours." Additionally, when E.B. requested that respondent provide "context" concerning events which may have occurred years ago, on specific dates, respondent declined to clarify his line of inquiry and, instead, proclaimed that the presenter did not provide "any context" for her questions during direct examination. On other occasions, when E.B. provided answers that respondent deemed insufficient, respondent would declare "that's not what I asked."

To maintain the decorum of the proceeding, the panel chair repeatedly instructed respondent to (1) be less "combative" towards E.B., (2) ask his questions in a manner that E.B. could understand, and (3) allow E.B. the

opportunity to fully answer his questions. On one occasion, when the panel chair told respondent that it may be beneficial to present E.B. with documents concerning the subject matter of his questions, respondent asserted that "no documents were just shown to [E.B.] from [the presenter]." Additionally, when the panel chair permitted E.B. to ask respondent to clarify his questions, respondent replied "is this your witness or is it just [the presenter's] witness because you're saying you're instructing him to answer . . . and this is a hearing for me." In response, the panel chair indicated that he was "not instructing the witness;" rather, he noted that he was "trying to make this a fair hearing for everyone."

**The Parties' Positions Before the DEC**

In his verified answer, respondent either denied or claimed that he was "without knowledge or information sufficient to form a belief as to the truth of" each of the charges of unethical conduct.[5] However, during the ethics hearing, respondent admitted that his Fee Agreement with E.B. failed to include the "Statement of Client Rights and Responsibilities," as R. 5:3-5(a) requires, and

[5] In In the Matter of Saleemah Malikah Brown, DRB 16-339 (May 31, 2017), we observed that "an answer that simply denies an allegation is insufficient," given that it does not provide "a full, candid, and complete disclosure of all facts reasonably within the scope of the formal complaint," as R. 1:20-4(e) requires.

included a provision for a "non-refundable retainer," as R. 5:3-5(b) prohibits. Nevertheless, respondent maintained that he had provided E.B. with the HHR Firm's "standard retainer agreement" and that he was unaware of whether the firm had "different retainers for other family matters." Respondent emphasized that, at the time he executed the Fee Agreement, in January 2019, he had been admitted to the New Jersey bar for only eight months. Respondent further stressed that his representation of E.B. was his first matrimonial client matter.

Additionally, following the opening of his own law practice, respondent claimed that he never charged E.B. any legal fees.[6] He maintained that he had continued to represent E.B., without compensation, to avoid any "delay" in the litigation resulting from E.B. having to retain new counsel.

However, respondent argued that, throughout the representation, he could not pursue an application to modify E.B.'s pendente lite child support obligation because E.B. had not timely provided him documentary proof reflecting his status as an unemployed full-time student. Specifically, respondent alleged that E.B. provided him proof of his status as a full-time student following their November 2021 discussion, one month before the conclusion of the divorce proceeding and, further, that he never received any documentary proof

[6] The record before us is unclear whether E.B. paid the HHR Firm any additional legal fees beyond his initial $4,000 payment.

concerning E.B.'s unemployed status.

Regarding his behavior during the March 24, 2021 status conference, respondent maintained that he had an "overzealous" "back and forth with [Judge] Wilson" in which he "could have . . . felt offended . . . by the court's directives and as such may have responded in an uncharacteristic manner." Respondent, however, expressed his view that he "always" attempts to "address [courts] with respect." Finally, respondent denied having engaged in any "willful" misrepresentations to Judge Wilson, claiming that his incorrect statements to the court concerning his filing of a motion on behalf of E.B. "was truly a mix up" with an unrelated matter.

In her summation brief, the presenter argued that respondent violated RPC 1.1(a), RPC 1.3, and RPC 3.2 by failing, throughout the nearly three-year representation, to file any application on behalf of E.B. to modify his pendente lite child support obligation. Specifically, the presenter asserted that, although E.B. had informed respondent of his unemployed status following F.W.'s March 2019 pendente lite support motion, respondent failed to file any reply to that motion, resulting in Judge Wilson granting that unopposed application "based on one-sided information." Thereafter, other than his deficient July 2021 opposition brief to F.W.'s motion to strike E.B.'s answer, respondent failed to take any action on behalf of E.B. concerning a child support award that his client

could not afford. The presenter emphasized that E.B. "became so desperate for relief" that he elected, in October 2021, to file a pro se child support modification motion, which Judge Wilson denied because respondent remained E.B.'s attorney of record. The presenter alleged that, by his conduct, respondent "effectively left [E.B.] without representation" and exposed him to potential arrest based on his inability to pay his child support obligation.

Moreover, the presenter alleged that respondent violated RPC 1.5(b) by failing to set forth, in his Fee Agreement, the required R. 5:3-5(a) Statement of Client Rights and Responsibilities in Civil Family Actions. Significantly, the presenter noted that the Fee Agreement failed to identify respondent as the attorney primarily responsible for E.B.'s representation. The presenter also emphasized that the Fee Agreement failed to set forth respondent's hourly billing rate and, instead, provided for a $4,000 non-refundable legal fee, as R. 5:3-5(b) prohibits. Further, the presenter alleged that respondent failed to prepare a new fee agreement for E.B. following his departure from the HHR Firm.

Next, the presenter argued that respondent violated RPC 3.2 and RPC 3.5(c) by engaging in combative and disrespectful behavior towards Judge Wilson during the March 24, 2021 status conference. Specifically, the presenter argued that respondent repeatedly interrupted Judge Wilson and challenged her

authority to direct when counsel could speak during the proceeding. The presenter noted that, when considered in its entirety, respondent's "belligerent attitude" and "accusations" that Judge Wilson favored Daniels constituted discourteous conduct intended to disrupt the proceeding.

Finally, the presenter argued that respondent violated RPC 3.3(a)(1) by misrepresenting to Judge Wilson, during the March 2021 status conference, that he recently had filed a motion to modify E.B.'s child support obligation when, in fact, he had not done so.

The presenter did not offer a recommendation to the hearing panel concerning the quantum of discipline for respondent's misconduct.

**The Hearing Panel's Findings**

The hearing panel found that respondent violated RPC 1.1(a), RPC 1.3, and RPC 3.2 by failing to file a reply to F.W.'s March 2019 pendente lite child support motion and, thereafter, by failing to make any attempt to modify E.B.'s child support obligation. The panel found that, even if E.B. did not provide documentation regarding his unemployment status, respondent could have drafted a certification for E.B., explaining his lack of employment, for submission to the court in opposition to F.W.'s motions or in support of E.B.'s

requested application to modify his child support payments. The hearing panel noted that respondent's failure to do so constituted unethical conduct.

Additionally, the hearing panel determined that respondent violated RPC 1.5(b) by failing to ensure that his Fee Agreement contained the information required by R. 5:3-5(a), including his hourly billing rate. The panel also found that respondent's Fee Agreement included a provision for a non-refundable $4,000 retainer, in violation of R. 5:3-5(b). Further, the panel found that respondent failed to prepare a new fee agreement for E.B. following his departure from the HHR Firm and the formation of his own law practice.

Next, the hearing panel found that respondent violated RPC 3.5(c) by engaging in disrespectful behavior towards Judge Wilson during the March 2021 status conference. Specifically, the panel noted that respondent "repeatedly interrupted and spoke over" Judge Wilson and challenged her authority to conduct the status conference, including when she permitted counsel to speak.[7]

However, the hearing panel determined to dismiss the RPC 3.3(a)(1) charge premised upon respondent's false assertion to Judge Wilson, during the status conference, that he recently had filed a motion to modify E.B.'s child support obligation. Based on respondent's testimony that, at the time of the

[7] The hearing panel did not make any findings concerning whether respondent's behavior towards Judge Wilson also constituted a violation of RPC 3.2.

status conference, he "mistakenly believed" he had filed such a motion when he had, instead, filed a similar motion for a different client, the hearing panel found no clear and convincing evidence that respondent knowingly made a false statement of material fact to Judge Wilson.

In recommending the imposition of a reprimand, the panel weighed, in mitigation, respondent's (1) lack of prior discipline, (2) admission that his Fee Agreement failed to comply with the relevant Court Rules, and (3) the fact that his misconduct occurred while he was a relatively new attorney. In aggravation, however, the hearing panel weighed the fact that, throughout the ethics hearing, respondent was "overly combative" with E.B. and the panel chair. Finally, the panel emphasized that respondent's failure to take any action to reduce E.B.'s child support payments resulted in serious financial harm to his unemployed client.

**The Parties' Positions Before the Board**

At oral argument before us, the panel chair summarized the panel's findings concerning respondent's unethical conduct and urged the imposition of a reprimand.

Respondent, in turn, apologized for mishandling his representation of E.B. and for engaging in inappropriate and disruptive behavior before Judge Wilson.

Although respondent deferred to us regarding the appropriate quantum of discipline for his misconduct, he emphasized that his representation of E.B. occurred while he was a relatively new attorney. He conceded, however, that he lacked diligence in representing E.B., particularly in connection with his failure to pursue a reduction in E.B.'s pendente lite child support obligation. Respondent noted that, even if E.B. had not timely provided him the documentation he had requested, he was not prevented from taking affirmative steps to competently represent his client.

Additionally, respondent reiterated his position that he had not engaged in any intentional misrepresentations to Judge Wilson during the March 2021 status conference and maintained that his disrespectful behavior during that proceeding constituted uncharacteristic conduct resulting from his attempt to zealously represent E.B. Further, although respondent noted that he had obtained the deficient Fee Agreement from the HHR Firm, he acknowledged that it was his responsibility to provide E.B. with a fee agreement that complied with the requirements of R. 5:3-5. Finally, respondent underscored how he values his law license and that he would utilize his experiences with the disciplinary system to reform his behavior.

**Analysis and Discipline**

*Violations of the Rules of Professional Conduct*

Following our de novo review of the record, we are satisfied that the DEC's determination that respondent violated RPC 1.1(a); RPC 1.3; RPC 1.5(b); RPC 3.2 (two instances); and RPC 3.5(c) is supported by clear and convincing evidence. Further, we determine, in accord with the DEC, that there is insufficient evidence to establish that respondent violated RPC 3.3(a)(1).

RPC 1.5(b)

In relevant part, RPC 1.5(b) requires a lawyer to set forth, in writing, the basis or rate of the legal fee before or within a reasonable time after commencing the representation. The purpose of the Rule "is to have the client fully informed as to the terms of the hiring and know without question his or her financial responsibility, as well as to prevent an attorney from overcharging." DeGraaf v. Fusco, 282 N.J. Super. 315, 320 (App. Div. 1995).

R. 5:3-5 imposes additional requirements for all written fee agreements in civil family actions where a "fee is to be charged." Specifically, R. 5:3-5(a) requires the fee agreement to "have annexed thereto the Statement of Client Rights and Responsibilities in Civil Family Actions" stating, among other requirements, (1) the name of the attorney primarily responsible for the

representation and that attorney's hourly rate; (2) a description of the anticipated legal services, including those not encompassed by the agreement, "such as real estate transactions;" (3) the method by which the fee is to be computed; and (4) the frequency when bills are to be rendered, including when the client is required to make payment.

Additionally, R. 5:3-5(b), in relevant part, prohibits a retainer agreement from including "a provision for a non-refundable retainer."

It is well-settled that not every violation of a Court Rule rises to the level of an ethics infraction. See In the Matter of Stanley Marcus, DRB 11-014 (June 28, 2011) (dismissing the charge that Marcus violated R. 1:21-7(b) by failing to advise the client that she could retain him on an hourly basis before entering into a contingent fee arrangement with the client, who claimed that she never had intended to retain Marcus on an hourly basis).

However, in In the Matter of Elliot Gourvitz, DRB 08-326 (May 12, 2009) at 31, we cautioned that, unlike Court Rules that impose page limits or filing and service deadlines in the management of litigation, Court Rules that are designed to protect clients, such as R. 5:3-5(b), which addresses the limitations on retainer agreements in civil family actions, "are a different matter." In that case, we found that the non-refundable retainer fee provision in the attorney's

matrimonial fee agreements constituted a violation of both R. 5:3-5(b) and RPC 1.5(a) (charging an unreasonable fee). Id. at 32.

More recently, in In the Matter of Ulysses Isa, DRB 18-065 (August 10, 2018) at 10, we found that the "DEC properly charged RPC 1.5(b) to capture [Isa's] failure to abide by the requirements of R. 5:3-5(a)." There, a client retained Isa to modify a child custody and visitation order in exchange for a $1,000 flat legal fee. Id. at 9. Isa's retainer agreement, however, violated R. 5:3-5(a) by failing to explain how an award of counsel fees would impact the legal fee. Ibid. Isa also failed to execute the retainer agreement and provide a copy of it to his client. Ibid. In sustaining the RPC 1.5(b) charge for Isa's failure to comply with R. 5:3-5(a) in connection with his retainer agreement, we echoed our rationale in Gourvitz and found that, like the provisions of R. 5:3-5(b), "the provisions of R. 5:3-5(a) are designed to protect clients." Id. at 10.

Here, respondent's Fee Agreement failed to include nearly all of the information required by R. 5:3-5(a), including (1) the fact that respondent was the attorney primarily responsible for the representation, (2) respondent's hourly billing rate, and (3) a description of the anticipated legal services, including those not contemplated by the Fee Agreement. Rather, the Fee Agreement required that E.B. provide a $4,000 "total" "non-refundable fee" for the entire representation, which R. 5:3-5(b) prohibits.

The Fee Agreement also provided that E.B.'s failure to pay any amount "due and owing" would automatically result in the filing of an action to recover such unpaid legal fees, in violation of the pre-action notice requirement of R. 1:20A-6. Further, the Fee Agreement required that E.B. "acknowledge" the potential "high costs of litigation," yet, failed to state whether, in a potentially expensive matrimonial matter, respondent intended to charge hourly fees should the cost of the representation exceed $4,000, as R. 5:3-5(a) requires.

Moreover, the Fee Agreement failed to set forth the scope of the representation, including the fact that it did not encompass real estate transactions, resulting in confusion to E.B. when, to his dismay, he discovered that he was forced to represent himself in connection with the sale of his marital residence. Because of respondent's refusal to participate in that portion of the representation while Daniels continued to represent F.W., E.B. described the sale as a "non-arm's length transaction." Finally, following his departure from the HHR Firm and the formation of his own law practice, respondent failed to prepare a new written fee agreement setting forth E.B.'s financial obligations, if any, to his new law firm.

In short, respondent's Fee Agreement failed to comply with the numerous substantive requirements of R. 5:3-5(a) and (b), which are designed to protect clients and fully inform them of their rights and responsibilities. Unlike the

attorney in Marcus, whose violation of a Court Rule failed to implicate any RPCs, respondent's conduct violated RPC 1.5(b) based on his failure to provide E.B. with a compliant written fee agreement that fully set forth his client's rights and financial obligations.

RPC 1.1(a), RPC 1.3, and RPC 3.2

RPC 1.1(a) prohibits an attorney from grossly neglecting a matter entrusted to the lawyer. Similarly, RPC 1.3 and RPC 3.2 respectively require, in relevant part, that an attorney act with reasonable diligence in representing a client and make reasonable efforts to expedite litigation consistent with the interests of the client.

Here, respondent violated each of these Rules by failing, throughout nearly the entire three-year representation, to attempt any meaningful effort to reduce E.B.'s pendente lite child support obligation.

Specifically, in March 2019, F.W. filed a motion to obtain pendente lite child support from E.B. based on the information contained in his February 2019 case information statement. However, following F.W.'s motion, E.B. insisted to respondent that he recently had lost his job. Rather than file a reply to F.W.'s application, advising the court of his client's claimed loss of employment, respondent did nothing, resulting in Judge Wilson granting that unopposed

application and requiring that E.B. pay $1,000 in monthly child support, $250 per month in any arrears, and $2,772.50 in counsel fees to F.W.

Following the issuance of the court's May 2019 pendente lite child support order, E.B. advised respondent that he could not afford to pay $1,000 in monthly child support, considering that he received only $1,100 in monthly unemployment benefits. Despite E.B.'s "countless" requests, respondent failed to file any application to reduce E.B.'s child support obligation, based on his claim that E.B. never provided him documentary proof of his unemployed status.

In our view, even if E.B. had not provided respondent with such documentary proof, respondent had numerous opportunities to prepare, for the court's consideration, a certification for E.B. to allow him to attest to his loss of employment, his limited financial means, and his explanation for his lack of gainful employment while enrolled in school. Respondent also could have sought, directly from E.B.'s former employer or his educational institution, written proof of his loss of employment and his enrollment as a full-time student. Rather than take any action on behalf of his client, respondent continued to do nothing, resulting in E.B. accruing significant arrears after his unemployment benefits had expired.

Significantly, in July 2021, approximately two-and-a-half years after E.B.'s claimed loss of employment, respondent filed an opposition brief to

F.W.'s motion to strike E.B.'s answer in which respondent, for the first time, asserted that E.B. was "in a grave financial crisis" because of his loss of employment. In support, respondent appended to his brief E.B.'s unsigned and uncertified letters stating that he was unemployed and had no income other than his student loans. However, respondent failed to support his assertions concerning E.B.'s "financial crisis" with a certification from E.B. attesting to his limited financial means, as R. 1:6-2(a) and R. 1:6-6 require.

Although respondent claimed that he was forced to file his deficient opposition brief, without the required certification from E.B., in order to comply with the filing deadline, he made no attempt to obtain an adjournment to allow for time to properly oppose the motion. Instead, respondent's short opposition brief appeared to pin the blame on E.B. for not providing "documentation . . . on a more timel[y] basis." Although Judge Wilson ultimately denied F.W.'s request to strike E.B.'s answer, she found E.B. in violation of litigant's rights for his failure to pay child support and directed that a warrant for his arrest be issued should he fail to make two consecutive child support payments.

Based on respondent's ongoing failure to make any attempt to reduce E.B.'s child support obligation, in October 2021, E.B. took matters into his own hands by filing a pro se application for such relief out of fear that he would be arrested for failing to pay child support. However, even after Judge Wilson

denied E.B.'s pro se motion – because respondent remained his counsel of record – respondent continued to refuse to file a modification motion based on his view that he did not have sufficient "documents to support" that application. Thereafter, in November 2021, respondent failed to fulfill his commitment to E.B. to file a motion for reconsideration of his pro se application, based on his view that E.B.'s child support obligation would be addressed at an upcoming December 2021 settlement conference.

Respondent's prolonged refusal to file a motion to modify E.B.'s child support payments left E.B. without the basic level of competent representation required of all lawyers. Moreover, respondent's conduct resulted in E.B. accruing significant arrears and facing potential arrest for a child support obligation that he could not afford. Thus, respondent violated RPC 1.1(a), RPC 1.3, and RPC 3.2

RPC 3.2 and RPC 3.5(c)

RPC 3.2 requires, in relevant part, that an attorney treat with courtesy and consideration all persons involved in the legal process. Similarly, RPC 3.5(c) prohibits a lawyer from engaging in conduct intended to disrupt a tribunal.

The Court has observed that "[c]ommon courtesy and civility are expected from a member of the bar whether he appears before the State's highest court or

presents a matter to some administrative body." In re Mezzacca, 67 N.J. 387, 390 (1975). Consequently, "'[a]n attorney who exhibits the lack of civility, good manners and common courtesy . . . tarnishes the entire image of what the bar stands for." In re Vincenti, 92 N.J. 591, 601 (1983).

In In the Matter of David S. Rochman, DRB 23-138 (Dec. 6, 2023), we observed that "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." Additionally, a violation of RPC 3.5(c) can result if a lawyer disregards the instructions of a tribunal by repeatedly interrupting the proceeding with inappropriate remarks. See In the Matter of David Richard Cubby, Jr., DRB 20-034 (Aug. 3, 2021) (sustaining an RPC 3.5(c) charge when, contrary to the instructions of the judge and the sheriff's officer, the attorney repeatedly interrupted the judge's bench decision and accused the judge of being "corrupt").

Here, respondent violated RPC 3.2 and RPC 3.5(c) based on his belligerent conduct towards Judge Wilson during the March 2021 status conference. Specifically, during that proceeding, respondent became argumentative with Judge Wilson and repeatedly interrupted her regarding whether he had received correspondence from the court concerning his discovery obligations. Respondent also baselessly accused the judge, in a

combative tone, of (1) engaging in a "bullying match" with him "every time [he was] on the line" with her, (2) refusing to allow him to answer questions, and (3) prohibiting him from making "a proper record."

Respondent, however, refused to heed Judge Wilson's directive that he wait his turn to speak and, when she cautioned him that his conduct was "disrespectful," he continued to interrupt her by proclaiming that he was in "a free court" and that he was "not a slave." Thereafter, when Judge Wilson reminded respondent that he was "in a court of law," he repeatedly accused her of "not talking to [] Daniels like that," even though Daniels had not interrupted the proceedings.

Respondent's behavior unquestionably exceeded the bounds of acceptable colloquy during a court appearance and constituted inappropriate attacks upon Judge Wilson's objectivity and ability to control the proceeding. Rather than control his behavior, as Judge Wilson had instructed, respondent displayed a lack of civility that disrupted the administration of that court proceeding.

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 misrepresenting to Judge Wilson, during the March 2021 status conference, that he had filed a recent motion to modify E.B.'s child support obligation.

During the ethics hearing, respondent conceded that he had not filed such a motion at the time of the status conference. Respondent was adamant, however, that he did not make any "willful" misrepresentations to Judge Wilson based on his claim that, at the time of the status conference, he had filed a similar motion for a different client weeks earlier and, consequently, mistook his work performed in that matter with his representation of E.B. Respondent attached to his verified answer a copy of that unrelated motion seeking to modify a custody arrangement, which he appeared to have prepared weeks before the status conference in E.B.'s matter. Given the lack of evidence concerning respondent's intent at the time of the status conference, and because the presenter did not attempt to refute respondent's claim that he had made a mistake when addressing Judge Wilson regarding the modification motion, we adopt the hearing panel's recommendation and dismiss the RPC 3.3(a)(1) charge for lack of clear and convincing evidence. See In re Hyderally, 208 N.J. 453, 461 (2011) (noting that,

"[a]bsent evidence supporting a finding of intentional conduct," the Court has declined to impose discipline for conduct involving dishonesty, fraud, deceit, or misrepresentation in connection with an RPC 8.4(c) charge).

In sum, we find that respondent violated RPC 1.1(a); RPC 1.3; RPC 1.5(b); RPC 3.2 (two instances); and RPC 3.5(c). We dismiss, for lack of clear and convincing evidence, the charge that respondent violated RPC 3.3(a)(1). The sole issue left for our determination is the appropriate quantum of discipline for respondent's misconduct.

*Quantum of Discipline*

Absent serious aggravating factors – such as harm to the client – conduct involving gross neglect, lack of diligence, and failure to expedite litigation ordinarily results in an admonition, even when accompanied by other non-serious ethics infractions, such as a violation of RPC 1.5(b). See In the Matter of Kevin N. Starkey, DRB 23-152 (Sept. 22, 2023) (the attorney grossly mishandled a quiet title action; specifically, following mediation, the client informed the attorney that the settlement agreement was no longer acceptable to him, after which the attorney ceased all work in the matter; thereafter, the attorney failed to oppose or inform his client of the adversary's two motions to enforce the settlement, resulting in a $1,877.50 counsel fee award against the

client; due to the attorney's continued silence, the adversary filed a motion to compel the sale of the client's property, in reply to which the attorney finally expressed his wish to withdraw as counsel; although the client obtained substitute counsel who secured the withdrawal of the adversary's motion to compel, the client was forced to pay his adversary an additional $3,041.15 in attorney's fees; in mitigation, the attorney fully reimbursed his client for the attorney's fees paid to the adversary and expressed remorse; no prior discipline in more than thirty years at the bar), and <u>In the Matter of Robert E. Kingsbury</u>, DRB 21-152 (Oct. 22, 2021) (throughout the three-year representation, the attorney failed to competently prosecute his client's tax-sale certificate foreclosure complaint beyond the pleading stage; during the representation, the attorney repeatedly filed deficient motions, all of which were denied or rejected because of procedural issues that were within his control to cure; the attorney also failed to set forth, in writing, the basis of his $1,500 flat fee; following the deterioration of his attorney-client relationship, 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 in more than forty-seven years at the bar).

The quantum of discipline is enhanced, however, when additional aggravating factors are present. <u>See</u> <u>In re Barron</u>, __ N.J. __ (2022), 2022 N.J.

LEXIS 660 (reprimand for an attorney's combined misconduct encompassing three client matters and eight RPC violations; specifically, the attorney engaged in gross neglect in one client matter, lacked diligence in three client matters, failed to communicate in three client matters, and failed to set forth the basis or rate of his fee in one client matter; in aggravation, we weighed the quantity of the attorney's ethics violations and the harm caused to multiple clients, including allowing a costly default judgment to be entered against two clients; additionally, the attorney's conduct cost two clients the chance to litigate their claims; in mitigation, we weighed the attorney's cooperation, his nearly unblemished forty-year career at the bar, and his testimony concerning his mental health condition), and In re Lenti, 250 N.J. 292 (2022) (censure for an attorney's combined misconduct encompassing five client matters and eleven RPC violations; in three of the client matters, the attorney failed to timely file necessary motions or pleadings in connection with matrimonial or child custody litigation; additionally, in connection with two of the matrimonial client matters, the attorney engaged in misrepresentations to her clients regarding the status of their cases; further, in connection with a third matrimonial client matter and a separate probate client matter, she failed to communicate with her clients; in aggravation, the attorney's misconduct resulted in the unnecessary delay of at least two client matters and the dismissal – and potential extinguishment – of at

least one client matter; however, in mitigation, the attorney had no prior discipline in her nine-year career at the bar and expressed sincere remorse and contrition; additionally, the attorney eventually engaged a family law attorney to help her review and advance her outstanding family law cases).

Respondent, however, also engaged in disruptive and belligerent conduct during the March 2021 status conference. 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 severity of the misconduct, the attorney's disciplinary history, and the presence of other ethics violations. However, absent serious aggravating factors, brief episodes of discourteous conduct typically result in an admonition or a reprimand. See, e.g., In the Matter of Gerard L. Del Tufo, DRB 10-127 (June 25, 2010) (admonition for an attorney who, while attending municipal court on an unrelated matter, agreed to represent a man, who just unsuccessfully had sought the adjournment of his trial concerning a motor vehicle charge; when the judge granted a similar adjournment request by the prosecutor, the attorney became indignant and accused the judge and prosecutor of corruption; in mitigation, the attorney had no prior discipline and expressed remorse for his actions); In re Gahles, 182 N.J. 311 (2005) (admonition for an attorney who, during oral argument on a custody motion, called the other party "crazy," "a con artist," "a fraud," "a person who

cries out for assault," and a person who belongs in a "loony bin;" in mitigation, 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; prior reprimand for unrelated conduct); In re Romanowski, 252 N.J. 415 (2022) (reprimand for an attorney who engaged in verbal abuse to his matrimonial client, via a series of a text messages and at least one telephone call, all of which took place during a single day; in his text messages, the attorney berated his client regarding her non-payment of his legal fees and expressed his intent to "want to dispose of you as a client;" during the telephone call, the attorney threatened to have a financial expert stop working on the case and threatened to withdraw as her attorney; the attorney also told the client to "shut up" and that she "better pay us first" before hiring a new attorney; finally, the attorney told the client that she "disgusted him" and called her an "idiot," a "moron," and a "ridiculous person;" in aggravation, the attorney directed his ire at his emotionally vulnerable matrimonial client; the attorney also failed to express genuine remorse; prior admonition).

Here, unlike the admonished attorneys in Starkey and Kingsbury, whose lack of diligence resulted in no ultimate financial harm to their clients, respondent's gross and protracted mishandling of E.B.'s matrimonial matter

resulted in significant financial harm to E.B. Specifically, respondent failed to file any reply to F.W.'s March 2019 pendente lite child support motion which he knew, based on E.B.'s assertions, was premised upon outdated financial information concerning E.B.'s employment status. Rather than allow E.B. to explain his loss of gainful employment in a certification for the court's consideration, respondent did nothing and, consequently, Judge Wilson granted F.W.'s unopposed application and ordered that E.B. make child support payments based on one-sided information. Thereafter, for the next two and a half years, despite E.B.'s "countless" pleas to respondent to file a motion to reduce his child support payments, respondent's inaction persisted, resulting in Judge Wilson declaring E.B. in violation of litigant's rights, subjecting E.B. to potential arrest for nonpayment of child support, and allowing E.B. to accrue substantial child support arrears following the expiration of his unemployment benefits.

Throughout the entire representation, it appears that respondent's only attempt to advise the court of E.B.'s financial condition occurred when he filed a deficient opposition brief to F.W.'s motion to strike. Respondent's opposition brief, however, was premised upon information contained in E.B.'s unsigned and uncertified letters which, as Judge Wilson informed respondent, failed to comply with the requirements of R. 1:6-2(a) and R. 1:6-6. In October 2021,

based on respondent's prolonged lack of diligence, and to avoid potential arrest for nonpayment of child support, E.B. attempted to take his representation into his own hands, filing a pro se application to reduce his child support, which was denied on procedural grounds based of respondent's status as counsel of record. By his misconduct, respondent effectively left E.B. without competent representation and deprived him of the opportunity to reduce his child support obligation on the merits.

Additionally, like the admonished attorney in Del Tufo, who became indignant and disruptive during a court proceeding, respondent engaged in disruptive and belligerent conduct during the March 2021 status conference by challenging Judge Wilson's authority to direct when counsel could address the court. Indeed, when Judge Wilson warned respondent that his conduct was disrespectful and directed that he not interrupt, respondent became incensed and made completely inappropriate and insensitive remarks, including that he was "in a free court" and that he was "not a slave." However, unlike Del Tufo, who conducted himself appropriately during his ethics proceeding, the DEC found that respondent was overly "combative" with E.B. during cross-examination, and with the panel chair, in connection with his attempts to maintain the decorum of the proceeding. Consequently, although respondent claimed that he had engaged in "uncharacteristic" behavior before Judge Wilson, we view his

conduct during the ethics hearing to suggest that he has not taken steps to ensure that he conducts himself with the common courtesy and civility expected of all members of the bar.

In mitigation, respondent's misconduct occurred while he was a young, inexperienced attorney who had been admitted to the New Jersey bar for less than four years. See In re Pena, 162 N.J. 15, 26 (1999) (finding, in mitigation, that the attorney's misconduct had occurred while he was a "young and inexperienced attorney" with between two and four years of experience as a practicing lawyer). However, although respondent's inexperience may explain his failure to prepare a compliant written fee agreement only eight months after his admission to the New Jersey bar, his inexperience did not excuse his indignant behavior before Judge Wilson or his refusal to make any attempt to apply for a reduction of E.B.'s child support obligation, as his client repeatedly had requested. Rather than conduct legal research or seek the advice of a more experienced attorney concerning whether he could file E.B.'s requested motion, respondent did nothing while E.B. continued to accrue significant arrears in connection with a child support award that he could not afford.

**Conclusion**

On balance, weighing the substantial financial harm respondent caused to his client against his relative inexperience at the time of his misconduct, we determine that a reprimand is the appropriate quantum of discipline necessary to protect the public and preserve confidence in the bar.

Additionally, given respondent's multiple episodes of unprofessional behavior throughout this matter, we determine to recommend the condition that, within sixty days of the Court's disciplinary Order in this matter, respondent complete a continuing education course in legal ethics and professionalism, as approved by the Office of Attorney Ethics.

Members Hoberman 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. Mary Catherine Cuff, P.J.A.D. (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 Dennis Todd Hickerson-Breedon
Docket No. DRB 24-039

Argued: April 25, 2024

Decided: August 19, 2024

Disposition: Reprimand

| ***Members*** | Reprimand | Absent |
|---|---|---|
| Cuff | X | |
| Boyer | X | |
| Campelo | X | |
| Hoberman | | X |
| Menaker | X | |
| Petrou | X | |
| Rivera | | X |
| Rodriguez | X | |
| Spencer | X | |
| Total: | 7 | 2 |

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