UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
UNITED STATES IMMIGRATION COURT

IN THE MATTER OF Alexander Cane' Respondent.	))))))))	File No. D2019-0367 IN PRACTIONER DISCIPLINARY PROCEEDINGS Date: March 18, 2022

ON BEHALF OF RESPONDENT:

Alexander Cane', Esq.
Pro Se

ON BEHALF OF EOIR & DHS:

Paul A. Rodrigues, Esq.
Disciplinary Counsel

Catherine M. O'Connell, Esq.
Disciplinary Counsel

AMENDED FINAL ORDER AND DECISION OF THE ADJUDICATING OFFICIAL[1]

The Disciplinary Counsel for the Executive Office for Immigration Review (Disciplinary Counsel or government) seeks to disbar Mr. Alexander Cane' (respondent or Mr. Cane') from the practice of law before the Immigration Courts, the Board of Immigration Appeals (BIA or Board), and the Department of Homeland Security (DHS).[2] For the reasons stated below, this Court agrees that disbarment is the appropriate sanction for the respondent given his numerous acts of contemptuous and obnoxious conduct, and

---

[1] The reason this order has been amended is stated in this Court's order issued in response to the government's motion to correct. The only changes to this order is the addition of the word "amended" in the title of the order, this footnote, the appellate advisals at the end of the order, minor spacing and font issues throughout the order, the certificate of service, and the date of the order. Otherwise, the content of the order has not been changed.

[2] Because disciplinary hearings are to be conducted "in the same manner as Immigration Court proceedings as is appropriate[,]" at times, this Court will cite to regulations that govern the practice before the Immigration Court in removal proceedings. 8 C.F.R. § 1003.106(a)(2)(v).

because his actions were prejudicial to the administration of justice and undermined the integrity of the adjudicative process.

I. BACKGROUND AND PROCEDURAL HISTORY

Alexander Cane' is an attorney licensed to practice law in the State of New York and was admitted to practice by the New York Appellate Division, First Department.[3] (Exh. 2 at 188.) On August 5, 2020, the Disciplinary Counsel filed a Notice of Intent to Discipline (NID) with the Board. (Exh. 1.) In the NID, the government charged Mr. Cane' with four separate counts of violating two sections of the federal regulations governing the practice before the Immigration Courts and the Board. On November 16, 2020, the respondent filed his response to the NID with the Board, in which he admitted some factual allegations in the NID, denied others, and stated that he could neither admit nor deny certain allegations due to a lack of knowledge. (Exh. 3.) Ultimately, the respondent denied he should be sanctioned and argued that the proceedings should be "denied on the papers." (*Id*. at 2.)

On January 25, 2021, the Board issued a decision forwarding the record to the Office of Chief Immigration Judge for the appointment of an Adjudicating Official.[4] (Exh. 4.) In that decision, the Board also denied the respondent's motion to dismiss the proceedings because he was not properly served. (*Id*. at 1, n.1) The Board rejected the respondent's argument, reasoning that any error that may have existed "was cured when the respondent received and responded to the Notice of Intent to Discipline and does not deprive the Board or an adjudicating official of jurisdiction over these proceedings." (*Id*.) Initially, a different Adjudicating Official was appointed to hear the respondent's case (Exh. 5), but the case was transferred to this Court on August 31, 2021.[5] (Exh. 6.)

On September 15, 2021, this Court issued a scheduling order in the case. (Exh. 8.) That order notified the parties that the Court was recently appointed to be the Adjudicating Official for the case. (*Id*.) The order also stated that a hearing on the NID was previously

---

[3] This is the proper spelling of the respondent's last name because Mr. Cane' spells it with an apostrophe after his last name.

[4] In the NID, the Disciplinary Counsel and the DHS sought to impose reciprocal discipline against the respondent, meaning that any disciplinary decision made in this case should equally apply to appearances before the DHS.

[5] In accordance with the regulations, this Court has familiarized itself with the record in this case. 8 C.F.R. § 1240.1(b).

scheduled for the week of October 18, 2021. (*Id.*) The prior Adjudicating Official also attempted to schedule a pre-hearing conference, but the respondent stated that he was unavailable until January 15, 2022, without further explanation, and that he needed 6 months to prepare his case.[6] (*Id.*) This Court denied any apparent motion to continue because no explanation was given for the respondent's unavailability until mid-January 2022. (*Id.*) The Court also did not schedule a pre-trial hearing because of the respondent's apparent unwillingness to cooperate with the prior Adjudicating Official's orders. (*Id.*) This Court did, however, state that either party may wish to file a motion to continue and that any such motion shall be filed within two weeks of the date of the scheduling order. (*Id.*) Neither party filed a motion to continue the disciplinary hearing by the Court imposed deadline.

This Court's scheduling order also reminded the parties of their obligations to ensure that all correspondence and filings must be professional. (*Id.*) The impetus of this part of the order was based on the attachments to the government's request to schedule a hearing on the NID (Exh. 7), which demonstrated "that the respondent has used abusive and unprofessional language in his emails to Court staff directed at the government and the prior[A]djudicating [O]fficial." (Exh. 8.) This Court warned that the parties shall ensure that "correspondence with staff, between the parties, and to the Court must be above reproach." (*Id.*) The Court instructed the respondent to "take care that his tone, tenor, and language used in any correspondence with staff or the government, or motions filed with this Court are professional." (*Id.*) The Court also warned the parties that the failure to abide by the Court's order "will result in this Court striking any such correspondence or motions from the record [and that] [s]uch behavior will not be tolerated by" the Court. (*Id.*) Finally, to ensure there was no confusion about the Court's expectation, the order notified the parties that they shall "act commensurate with the very serious nature of these proceedings. The parties will also ensure proper decorum will be maintained at all times, including in correspondence with each other, with Court staff, in motions to the Court, and in any hearings." (*Id.*)

II. DEFENSES ADVANCED IN RESPONSE TO NOTICE OF INTENT TO DISCIPLINE

The respondent advanced a number of defenses to the NID in his brief filed with the Board. (Exh. 3.) Those arguments are as follows: (1) the NID was not properly served on

[6] The respondent was represented by counsel when he filed his response to the NID with the Board and before the prior Adjudicating Official. Prior counsel sought to withdraw from representing the respondent and this Court granted that request. (Exh. 8; Exh. 9.)

him consistent with the regulations; (2) the NID was filed a day after the last allegation in the charging document, thus there was insufficient time to investigate that complaint against him; (3) his conduct on the whole was merely zealous advocacy and not unethical behavior; (4) disciplinary proceedings were filed in retaliation to the respondent's threat of filing a complaint against Judge Tadal; (5) the proposed discipline of a 3-year suspension is unjust and beyond normal sanctions for actions committed by other practitioners; (6) counseling is a more appropriate sanction given his 30-year career without any other bar complaints and because the respondent suffers from depression due to several deaths to individuals close to him in the past few years, all of which occurred during the time of the allegations listed in the NID; and (7) he asserts that the regulations are overly vague, arbitrary, and capricious. (Exh. 3.)

The respondent's first argument is without merit. In its order to the Office of the Chief Immigration Judge to appoint an adjudicating official, the Board denied the respondent's motion regarding improper service. The BIA concluded that any "possible error in service . . . was cured when the respondent received and responded to the Notice of Intent to Discipline and does not deprive the Board or an adjudicating official of jurisdiction over these proceedings." (Exh. 3 at n. 1.) The Board did not address the remaining issues raised by the respondent because it would likely entail fact-finding. (*Id*. at 1.)

The respondent's second argument is equally without merit. Merely because the last complaint was filed a day before the NID was filed with the Board, does not mean that there was insufficient time to investigate the claim. Frankly, the respondent's conduct, as discussed in more detail below, was easily investigated in a short timeframe and the respondent admitted to the accuracy of factual allegations 28 and 29 in the NID, related to Count Four. (Exh. 3 at 11-12.) In any event, those allegations are based on an email sent by the respondent that used language like "your filthy, racist actions" and referring to court staff and the judges involved with the case "filthy scumbag racists[.]" (Exh. 1 at 10.) This language on its face, and as discussed in more detail below, fits within the definition of contemptuous and obnoxious conduct, and would prejudice the administration of justice and undermine the adjudicative process. It seems to this Court that there was more than ample time for the government to receive and add these allegations to the NID.

The remaining arguments—(3) his conduct was mere zealous advocacy; (4) proceedings were instituted as retaliation to his threats against Judge Tadal; (4) the proposed discipline is unjust and disproportionate; (6) his proposed counseling sanction;

and (7) his claim that the regulations are vague, arbitrary, and capricious—will be addressed in more detail below.

III. EVIDENCE PRESENTED

The disciplinary hearing commenced on October 18, 2022, and concluded on the same day. This Court has considered all of the evidence of record, even if not explicitly mentioned in this order.[7] The following documents were admitted into evidence.

A. Documentary Evidence

Exhibit	Description
Exhibit 1	Notice of Intent to Discipline, pages 1-14
Exhibit 2	Government's Initial Exhibits, pages 1-240
Exhibit 3	Respondent's Answer, pages 1-27, and Tabs A-F
Exhibit 4	Board of Immigration Appeals Order, dated January 25, 2021
Exhibit 5	Appointment of Adjudicating Official, dated June 5, 2021
Exhibit 6	Appointment of Adjudicating Official, dated August 31, 2021
Exhibit 7	Attachment 1, attachment to Government's Motion to Set a Hearing Date, dated September 9, 2021
Exhibit 8	Adjudicating Official's Scheduling Order, dated September 15, 2021
Exhibit 9	Adjudicating Official's Order Granting Motion to Withdraw, dated October 4, 2021
Exhibit 10	Government's Amended Table of Contents and Additional Exhibits, pages 241-371
Exhibit 10A[8]	Government's Second Amended Table of Contents and Additional Exhibits, pages 372-78
Exhibit 11	Government's Witness List

[7] While the party's motions and briefs were not marked as exhibits, this Court considers the entire file in the respondent's disciplinary case, even if not explicitly mentioned, as is required by the regulations. *See* 8 C.F.R. § 1003.106(a)(2)(iv) (stating that "in rendering a decision, the adjudicating official shall consider the following: the complaint, the preliminary inquiry report, the Notice of Intent to Discipline, the answer, any supporting documents, and any other evidence, including pleadings, briefs, and other materials")

[8] Exhibit 10A was not admitted into evidence at the time of the disciplinary hearing. It appears the failure to admit the evidence was an oversight by the Court. In any event, either party may file an objection to the consideration of this exhibit within 15 days of the date of this order. Failure to timely file an objection shall result in the Court deeming any objection waived. 8 C.F.R. § 1003.31(c) (stating that an Immigration Judge may set or extend deadlines and that failure to file a response by the court-imposed deadline shall result in the Court finding the opportunity to object has been waived).

B. Testimonial Evidence

The government called three witnesses—the Honorable Immigration Judges Mirlande Tadal and Jason L. Pope, and the Court Administrator for the Elizabeth Immigration Court, Mr. Paul Friedman. The respondent failed to appear for his hearing and thus no witnesses testified on his behalf. In this Court's September 2021 scheduling order, it warned the respondent that his failure to appear "will result in this Court proceeding in the respondent's absence."[9] (Exh. 8) (citing 8 C.F.R. § 1003.106(a)(3) (requiring an adjudicating official to "proceed and decide the case in the absence of a practitioner" who requested a hearing). The case was adjourned for this Court to issue a written decision.

IV. THE DISCIPLINARY HEARING AND FINDINGS OF FACT

A. Credibility

The provisions of the REAL ID Act of 2005 apply to this case because the NID was filed on or after May 11, 2005. *See Matter of S-B,* 24 I&N Dec. 42 (BIA 2006). Whether a witness testifies credibly depends on factors such as the witness's "demeanor, candor, and responsiveness [and] the inherent plausibility of the . . . . witness's account, the consistency between the . . . witness's written and oral statements . . . the internal consistency of each such statement, the consistency of such statements with other evidence of record . . . and any inaccuracies or falsehoods in such statements." INA § 208(b)(1)(B)(iii); *see also Kin v. Holder*, 595 F.3d 1050, 1055 (9th Cir. 2010); *Shrestha v. Holder*, 590 F.3d 1034, 1040-43 (9th Cir. 2010). These factors are to be weighed in light of the totality of the circumstances. INA § 208(b)(1)(B)(iii).

The trier of fact may also consider "any other relevant factor." *See Shrestha*, 590 F.3d at 1040. An Adjudicating Official may consider any evidence in the record that provides a "legitimate articulable basis to question the [applicant's] credibility." *Singh v. Holder*, 638 F.3d 1264, 1272 (9th Cir. 2011). A basis to question a witness's credibility exists if there is evidence in the record that demonstrates that the witness has a "history of dishonesty." *Sarvia-Quintanilla v. INS*, 767 F.2d 1387, 1392 (9th Cir. 1985).

An adverse credibility determination, however, must be reasonable and take into consideration the individual circumstances of the witness. *Shrestha*, 590 F.3d at 1041. The

[9] At the start of the disciplinary hearing, this Court notified the government that it would object to improper questions on the respondent's behalf and may cross-examine witnesses on the respondent's behalf to ensure that the proceedings are fair to the respondent.

Court "should recognize that the normal limits of human understanding and memory may make some inconsistencies or lack of recall present in any witness's case." *Id.* at 1044-45.

This Court observed all of the witnesses who testified. The Court also compared their testimony with the other record evidence. Based on this observation and comparison, this Court concludes, that all of the witnesses testified credibly. The testimony of each witness was consistent with their own affidavits, internally consistent, and consistent with the other record evidence.

B. Findings of Fact

In his response to the NID, the respondent admits to some factual allegations, denies others, and asserts that he lacks the knowledge to admit or deny other allegations. (Exh. 3.) In particular, the respondent denies factual allegations 1, 5, 10, 12, 15, 17, and twenty. (*Id.* at 2-12.) He also stated he could neither admit nor deny factual allegations 2, 11, and 27 due to a lack of knowledge. (*Id.* at 2-11.) The respondent admitted the remaining factual allegations.[10] (*Id.* at 2-12.) Based on the totality of the record, including the respondent's admissions, this Court concludes that the government has met its burden to establish all of the factual allegations in the NID, with the exception of factual allegation 3 and twenty-seven.

1. Denied Factual Allegations Related to Count One of the Notice of Intent to Discipline

The respondent denied that on October 28, 2019, he filed a notice of appearance for respondent O[redacted] D[redacted] A[redacted] F[redacted], which was alleged in factual allegation one. (*Id.* at 2.) Despite the respondent's denial, he did file a notice of appearance with the Court and was scheduled to represent his client on October 28, 2019. (Exh. 2 at 71.) As such, this allegation has been proven by the government.

[10] Three factual allegations (3, 7, and 28) do not fit the broad categories discussed above. For factual allegation 3, the respondent stated that he was not counsel of record for the respondent associated with Count 1 of NID on October 28, 2019, and he clarified that at some point bond was denied. (Exh. 3 at 2.) In his response to factual allegation 7, the respondent asserted that the allegation is correct, but the judge's statement was incorrect. (*Id.* at 3.) For factual allegation 28, the respondent stated that it was "true." (*Id.* at 11.) Factual allegation 3 is not sustained because this Court could not find any evidence to support the assertion that Judge Tadal took pleadings and informed the respondent's client to file relief at the next hearing. Factual allegation 7 is sustained because the respondent admitted to it, he only quibbled with whether the judge's statements were accurate. (*Id.* at 3.) Finally, factual allegation 28 is also sustained because the respondent admitted it was "true," even though he did not use the term "admit." (*Id.* at 11.)

The respondent, next, did not admit or deny factual allegation 2 due to a lack of knowledge, and he also effectively denied factual allegation 3 because he claims he was not the respondent's counsel on October 28, 2019. (Exh. 3 at 2.) The respondent is mistaken. He filed a notice of appearance and acknowledged in his cover letter that the next hearing was scheduled for October 28, 2019. (Exh. 2 at 71.) To be sure, he stated that he would not be able to appear before the Court on that date and requested a one-week continuance. (*Id.*) Nevertheless, the record evidence demonstrates that factual allegations 2 and 3 are accurate and thus are sustained.

The respondent denied factual allegation 5, which alleges that he requested a bond hearing in Mr. F[redacted]s case before Immigration Judge Mirlande Tadal went on the record. (*Id.*) The record evidence does support this factual allegation. Judge Tadal filed a declaration with the Court, which states in relevant part, that a master calendar hearing was held on November 13, 2019, in Mr. F[redacted] case. (Exh. 2 at 38.) She further stated that "[b]efore the master calendar hearing began, Cane' demanded a custody redetermination hearing." (*Id.*) This evidence is sufficient to sustain factual allegation five.

2. <u>Denied Factual Allegations Related to Count Two of the Notice of Intent to Discipline</u>

The respondent denied factual allegations 10, 12, 15, and 17 related to Count 2 of the NID, and he stated he could not admit or deny factual allegation 11 due to a lack of knowledge. (Exh. 3 at 6-9.) These factual allegations are supported by the record evidence. Factual allegation 10 states that the respondent filed a motion for bond redetermination on November 13, 2019. Judge Tadal's affidavit proves that the respondent filed the motion for custody redetermination on that date. (Exh. 2 at 39) (stating that immediately after the November 13, 2019 master calendar hearing the respondent filed a custody redetermination motion). Factual allegation 11 states that a hearing notice was mailed to the respondent by staff at the Elizabeth Immigration Court, scheduling the case for December 4, 2019. (Exh. at 5.) This factual allegation is also supported by Judge Tadal's affidavit, which reiterates the substance of the factual allegation. (Exh. 2 at 39.)

The respondent denied factual allegation 12, which alleges that the respondent did not appear for the respondent's bond redetermination. (Exh. 3 at 6.) This allegation is supported by Judge Tadal and Judge Pope's affidavits, and the transcript of the hearing. (*Id.* at 23, 39, and 43.) In factual allegation 15, the government asserted that the respondent began to explain in his own words what occurred after he left the courtroom on November 13, 2019. (Exh. 1 at 5.) The respondent denied this allegation. (Exh. 3 at 6-7.) The allegation is proven by the record of the transcript, where the respondent provides a detailed

explanation of the events that occurred after he left Judge Tadal's courtroom on November 13, 2019. (Exh. 2 at 25-26.) Finally, factual allegation 17 states that the respondent "then promptly hung up the phone." (*Id*. at 8.) This factual allegation is supported by the transcript of the hearing, where Mr. Cane' stated that he was "off the phone. Bye, bye." (*Id*. at 28.) Judge Pope tried to confirm whether Mr. Cane' was still on the line, but determined that he was no longer on the phone. (*Id*.) (after the judge asked for counsel he stated to the respondent's client "[a]ll right sir. Your counsel [is] off the phone.")

As evidence by the above findings, factual allegations 10-12, 15, and 17 in the NID have been proven by the government. This Court, therefore, sustains those factual allegations.

3. <u>Denied Factual Allegations Related to Counts Three and Four in the Notice of Intent to Discipline</u>

The respondent denied factual allegations 20 and 21, related to Count 3 of the NID, and claimed a lack of knowledge related to factual allegation 27 alleged in Count 4 of the NID. (Exh. 3 at 9-11.) These factual allegations are all sustained because there is sufficient evidence in the record, with the exception of factual allegation twenty-seven. Factual allegations 20 and 21 allege that the respondent was sent an email rejecting a notice of appearance he filed because no notice was attached to the email and that on the same day the respondent responded to the rejection by stating "Sheesh,,, Sorry about that, here it is." (Exh. 1 at 8) (commas in original). The government attached the emails related to this incident, which confirm that factual allegations 20 and 21 accurately reflect the incident described in the NID. (Exh. 2 at 47.) As such, these factual allegations are sustained. Factual allegation 27, on the other hand, does not have any supporting documents filed by the government. The only document that comes close is the respondent's request for a continuance of the hearing. (*Id*. at 56.) However, that motion does not state when the hearing notice was mailed to the respondent, scheduling the case for an individual hearing. (*Id*.) This factual allegation is therefore not sustained.

V. THE DISCIPLINARY HEARING

A. TYPES OF DISCIPLINARY PROCEEDINGS

There are three types of disciplinary proceedings that may affect a practitioner's ability to appear before Immigration Courts or the Board—immediate suspension,

summary disciplinary proceedings, and proceedings in which a practitioner has a full hearing.[11] *See* 8 C.F.R. §§ 1003.103 *et seq* and 1003.106 *et seq*.

A practitioner may be immediately suspended from practice before the Immigration Courts or the Board if the Disciplinary Counsel files a petition with the Board.[12] 8 C.F.R. §§ 1003.103(a)(1)-(a)(4). Immediate suspension of a practitioner occurs when the Disciplinary Counsel files a petition with the Board and if the practitioner has "been found guilty of, or pleaded guilty or nolo contendere to, a serious crime," as defined by the regulations. 8 C.F.R. § 1003.103(a)(1). Immediate suspension may also be warranted if a practitioner "has been suspended or disbarred by, or while a disciplinary investigation or proceeding is pending has resigned from" the state bar of any state, "possession, territory, or Commonwealth of the United States, or the District of Columbia, or any Federal Court, or who has been placed on an interim suspension pending a final resolution of the underlying disciplinary matter." *Id*. Once a petition is filed, "the Board shall forthwith enter an order immediately suspending the practitioner from practice before the Board, the Immigration Courts, and/or the DHS" notwithstanding any pending appeal of the reasons for the practitioner's suspension. 8 C.F.R. § 1003.103(a)(4). The immediate suspension of a practitioner shall continue until a final administrative decision is made. *Id*. Once the order for immediate suspension has been issued, Disciplinary Counsel shall "promptly initiate summary disciplinary proceedings against a practitioner[,]" a process that is described in more detail in another part of the regulations. 8 C.F.R. § 1003.103(b).

A practitioner who is subject to immediate discipline "must make a prima facie showing to the Board in his or her answer that there is a material issue of fact in dispute with regard to the basis for the summary proceedings" or with respect to one of the exceptions that apply in the regulations. 8 C.F.R. § 1003.106(a)(1). In the event "the Board determines that there is a material issue of fact in dispute," the Board "shall refer the case to the Chief Immigration Judge for the appointment of an adjudicating official." *Id*. Otherwise, the Board retains jurisdiction over the case. *Id*. Summary disciplinary proceedings are instituted only after an immediate suspension has occurred. 8 C.F.R. § 1003.103(b).

---

[11] These same procedures apply to accredited representatives. 8 C.F.R. § 1003.106 *et seq*. Because the respondent is a licensed attorney, however, this order only refers to practitioners or attorneys rather than accredited representatives.

[12] The DHS may also file a petition to immediately suspend a practitioner from practice before the DHS. 8 C.F.R. § 1003.103(a)(2).

In all other cases, a practitioner may only be disciplined when a NID has been filed with the Board and the practitioner has been given an opportunity to respond. 8 C.F.R. § 1003.105(a)(1). Service of the NID must be made on the practitioner and it "shall contain a statement of the charge(s), a copy of the preliminary inquiry report, the proposed disciplinary sanctions to be imposed, the procedure for filing an answer or requesting a hearing, and the mailing address and telephone number of the Board." *Id*. The practitioner may file an answer to the NID. 8 C.F.R. § 1003.105(c). Among other things, the answer "shall contain a statement of facts which constitute the grounds of defense and shall specifically admit or deny each allegation set forth in the Notice of Intent to Discipline." 8 C.F.R. § 1003.105(c)(1). Any allegation in the NID "which is not denied in the answer shall be deemed to be admitted and may be considered as proved, and no further evidence in respect of such allegation need be adduced." 8 C.F.R. § 1003.105(c)(2).

B. SUMMARY OF ALLEGATIONS

As noted above, the Disciplinary Counsel alleged four separate counts of violations of the professional code of conduct with 30 separate factual allegations. All of the factual allegations have been sustained, with the exception of factual allegations 3 and 27, because the respondent admitted to them or there was sufficient evidence introduced to support the allegations. Counts 1 and 2 alleged that the respondent engaged in "contumelious or otherwise obnoxious conduct, with regard to a case in which he acted in a representative capacity, which would constitute contempt of court in a judicial proceeding," and in "conduct that is prejudicial to the administration of justice or undermines the integrity of the adjudicative process[.]" (Exh. 1 at 5 and 8) (citing 8 C.F.R. §§ 1003.102(n) and 1003.102(n)). Counts 3 and 4 alleges that the respondent engaged in "contumelious or otherwise obnoxious conduct[.]" (*Id*. at 9 and 11) (citing 8 C.F.R. § 1003.102(g)). In each charged violation of the ethical rules, the respondent is alleged to have engaged in this conduct based on his interactions with court personnel in emails and directly with two judges on the record.

The respondent did not attend the disciplinary hearing, even though he was provided notice of the hearing and an opportunity to seek a continuance by filing a request demonstrating good-cause. (Exh. 8.) The respondent was also warned that the Court is required to proceed to hearing in the respondent's absence. (*Id*.) (citing 8 C.F.R. § 1003.106(a)(3) (requiring an adjudicating official to "proceed and decide the case in the absence of the practitioner" who requested a hearing.)) The parties were notified in this Court's order affirming the hearing date, that a motion to continue may be filed by either party, with the caveat that any "such motion shall be filed within two weeks of the date of

[the Court's] order and it must demonstrate good cause for the request by detailing the reasons for the continuance." (Exh. 8.) No motion to continue was filed by either party.

C. STATEMENT OF LAW

Because the respondent failed to appear at his disciplinary hearing, this Court will analyze his response to the NID to the Board in determining whether to sustain the charges against him. To be sure, the burden lies with the government to prove "the grounds for disciplinary sanctions enumerated" in the NID "by clear and convincing evidence." 8 C.F.R. § 1003.106(a)(iv). Nevertheless, for the sake of completeness, and to ensure a fair and impartial adjudication of the respondent's case, this Court will address the respondent's arguments in its analysis of the charges alleged in the NID. Moreover, the respondent denied violating any of the rules of professional conduct in his answer to the NID. (Exh. 3.)

Contumelious or otherwise obnoxious conduct is not defined in the regulations.[13] 8 C.F.R. § 1003.102(g). Nevertheless, various state and federal courts have defined these terms and provided persuasive guidance to analyze them. Contumelious or obnoxious conduct has been found to include "abusive . . . [or] insulting language." *Matter of Sondel*, 111 AD 3d 168, 173 974 N.Y.S.2d 15 (2013). Lawyers must always act above reproach when advocating for a client's cause before a tribunal. Such a duty is commensurate with the esteem with which an attorney must serve his client and the legal profession. Counsel must balance two competing responsibilities. A lawyer must "courageously, vigorously, and with all the skill and knowledge he possesses[]" present his case on behalf of his client. 22 NYCRR § 700.4(a). This responsibility is balanced against counsel's obligation to "maintain a respectful attitude toward the court." *Id*. In so doing, counsel should act civilly by "avoiding antagonistic or acrimonious behavior, including vulgar language, disparaging personal remarks, or acrimony towards opposing counsel, parties, or witnesses[.]" 22

---

[13] The regulatory history of 8 C.F.R. Section 1003.102(g) suggests that it would only take effect once regulations are promulgated to give Immigration Judges contempt power. Professional Conduct for Practitioners—Rules and Procedures, 65 FR 39513-01 (June 27, 2000). In response to comments from the public, the agency stated that it expects a "finding of contempt will become a prerequisite to the imposition of disciplinary action pursuant to this subsection[]" once contempt powers are promulgated. *Id*. To date, however, no final contempt power regulation has been issued. Nevertheless, the agency made clear that "the current language [in Section 1003.12(g)] will be retained in the final rule, pending amendment by the contempt regulations, which will be published in the near future." *Id*. For this Court, the regulatory history does not support a conclusion that the regulations are invalid until the contempt regulations are promulgated. Rather, the regulators contemplated that Section 1003.102(g) would be amended after "contempt regulations" are promulgated. *Id*.

NYCCR part 1200, Appendix A. Civility also includes "conducting oneself with dignity and refraining from engaging in acts of rudeness and disrespect in depositions, negotiations, and other proceedings." *Id*. Finally, a lawyer shall not "engage in undignified or discourteous conduct[]" before a tribunal. New York State Unified Court System, Rules of Professional Conduct, Rule 3.3(f)(2).

Conduct that is prejudicial to the administration of justice or undermines the integrity of the adjudicative process includes "any action or inaction that seriously impairs or interferes with the adjudicative process when the practitioner should have reasonably known to avoid such conduct[.]" 8 C.F.R. § 1003.102(n). Lawyers should not "engage in conduct intended to disrupt the tribunal[]" because such conduct is prejudicial to the administration of justice and undermines the tribunal and the adjudicative process. New York State Unified Court System, Rules of Professional Conduct, Rule 3.3(f)(4).

The regulation is based on the American Bar Association Model (ABA) Rule 8.4(d), which is to engage in conduct that is prejudicial to the administration of justice. Professional Conduct for Practitioners—Rules and Procedures, and Representation and Appearances, 73 FR 76914-01 (Dec. 18, 2008). Further, the Court shall "consider the ABA's comments to ABA Model Rule 8.4(d), and how this rule has been applied in interpreting and applying this regulatory provision, so that this new ground for discipline would not be applied in a manner that is inconsistent with the prevailing interpretations with which attorneys are already familiar." *Id.*

The Comment to ABA Rule 8.4(d) notes that "a lawyer should be professionally answerable . . . for offenses that indicate lack of those characteristics relevant to law practice. Offenses involving violence, dishonesty, breach of trust, or *serious interference with the administration of justice* are in that category." MODEL RULES OF PRO. CONDUCT r. 8.4 cmt. (AM. BAR ASS'N 1983). Moreover, "[a] pattern of repeated offenses, even ones of minor significance when considered separately, can indicate indifference to legal obligation." *Id*. Finally, "[t]hreats to counsel to file disciplinary charges against his opponent may violate . . . [Rule] 8.4(d)." USE OF THREATENED DISCIPLINARY COMPLAINT AGAINST OPPOSING COUNSEL, ABA Formal Op. 94-383 (July 5, 1994).

//

//

//

//

D. Findings Related to Counts 1 thru 4 in the Notice of Intent to Discipline[14]

1. Contumelious or Obnoxious Conduct (Counts 1 thru 4)

In Counts 1-4, the government alleges that the respondent acted in a contumelious or obnoxious manner "with regard to a case in which he acted in a representative capacity, which would constitute contempt of court in a judicial proceeding[.]" (Exh. 1 at 5, 8, 9 and 11.) In all 4 counts, the government describes the respondent's conduct and provides lengthy quotes of the respondent's statements to Immigration Judges Tadal and Pope, and excerpts of correspondence to court staff. (*Id.*)

a. The Respondent Engaged in Contumelious or Obnoxious Conduct

In each of the counts in the NID, the government has overwhelmingly demonstrated that the respondent acted in a contumelious or obnoxious way. (*See* Exh. 1.) Count 1 relates to a master calendar hearing before Judge Tadal. (*Id*. at 2; Exh. 2 at 4-10.) At the start of every hearing, an Immigration Judge announce the parties' presence and the presence of any interpreter. EOIR Policy Manual, Chapter II.4(15)(f) (Feb. 22, 2022). At a master calendar hearing on November 13, 2019, before the Court could even delineate those who were present at the hearing, the respondent began to act in a disrespectful and discourteous manner. (Exh. 2 at 5 and 38.) After stating his name for the record, Mr. Cane' attempted to force Judge Tadal to conduct a bond hearing when the proceedings were scheduled for a master calendar hearing. (*Id*. at 5 and 38.) Judge Tadal attempted to calmly take control of the courtroom, but the respondent would not relent. First, he said "I'm going to make the record whether you like it or not." (*Id*. at 5 and 38.) He then threatened

---

[14] In his brief to the Board, the respondent argued, in two sentences, that the regulations he is alleged to have violated are arbitrary and capricious. (Exh. 3 at 26.) He also asserted that because the regulations are vague and ambiguous they cannot be consistently and fairly applied. (*Id.*) The respondent's argument is not well developed, thus making it nearly impossible for this Court to fully address his claimed concerns. *See United States v. Dunkel*, 927 F.3d 955, 956 (7th Cir. 1991) ("Judges are not like pigs, hunting for truffles buried in briefs.") In any event, there is nothing vague, arbitrary, capricious, or ambiguous about the regulations at issue in this case. Since the common law, attorneys have been expected to refrain from acting with "[i]nsolence [towards] judge[s] in the form of insulting words or conduct in court" and behaving in such a manner has constituted "grounds for contempt." *In re Buckley*, 514 P.2d 1201, 1208 (Cal. 1973) (*en banc*) (citing Oswald on Contempt at 51-54) (1911)). Moreover, the disciplinary rules that are the subject of these proceedings "are not contrary to applicable disciplinary rules of other jurisdictions." *Gadda v. Ashcroft*, 377 F.3d 934, 945(9th Cir. 2004). Indeed, the duty to ensure that an attorney's conduct is not prejudicial to the administration of justice is "almost universally recognized in American jurisprudence." *In re Synder*, 105 S.Ct. at 2881 n. 7.

Judge Tadal with contacting her supervisor if she did not conduct a bond hearing. (*Id*. at 6 and 28.)

Judge Tadal asked whether the respondent was ready to file his client's application for relief. (*Id*. at 7 and 38-39.) The respondent attempted to take over and bully Judge Tadal by directing the court's interpreter to translate the proceedings for his client. (*Id*. at 7.) He then accused Judge Tadal of being impolite to his client and he proceeded into, what can only be described as a tirade against Judge Tadal. (*Id*. at 8-10.) He claimed that Judge Tadal had a "terrible reputation" and that he could "name chapter and verse attorneys—who can't stomach appearing" before her. (*Id*. at 9-10) The respondent further asserted that he had a prior bad experience with Judge Tadal and that he was "not going to put up with it." (*Id*. at 9.) In response, Judge Tadal thanked counsel and continued the case for an application for relief to be filed even though no application was timely filed. (*Id*. at 9-10.) Mr. Cane' did not leave well-enough alone, however. He continued with his rant and threatened Judge Tadal with filing a "formal complaint with the Board of Immigration Appeals." (*Id*. at 10.) He also threatened to file a bar complaint against her, a motion to recuse, and demanded that Judge Tadal resign for the "benefit of the men and women who appear before" her. (*Id*.) Finally, the respondent ended his outburst by reiterating that Judge Tadal had "a terrible reputation" and that she had "no idea the harm and the damage [her] arrogance, [her] petulance, causes to attorneys, clients and their families."[15] (*Id*.)

After this incident, the Disciplinary Counsel issued the respondent a letter describing his conduct towards Judge Tadal and requested a response. (Exh. 2 at 64-66.) Rather than take any responsibility for his actions, Mr. Cane' continued to insult and demean Judge Tadal. He said that he "and everyone else has had difficulties with IJ Tadal; she is an arrogant, condescending, defiant, dishonest person." (*Id*. at 68.) He claimed that the Third Circuit Court of Appeals "recently said the same thing and then some about her." (*Id*.) He alleged that Judge Tadal "falsified [his] client's custody determination; this intentional, deliberate fabrication - designed to violate my client's constitutional Due

[15] In his response brief to the NID, the respondent claims these disciplinary proceedings were instituted as retaliation for his comments that he would file a complaint against Judge Tadal. (Exh. 3 at 22-23.) Other than this unfounded accusation, there is no evidence in this record to support his claim. From this Court's review of the record evidence, it is clear that Disciplinary Counsel tried to resolve the respondent's behavior without instituting formal disciplinary proceedings. In fact, the government sent the respondent a letter related to this incident rather than immediately seeking to institute these formal proceedings, and gave him an opportunity to respond. (Exh. 2 at 64-66.) Thus, the respondent's assertions are without merit.

Process rights, a felony both under the United States Code and New Jersey Penal Code - has been established, as a matter of law." (*Id.*)

Undeterred by Disciplinary Counsel's letter, the respondent continued his contumelious and obnoxious conduct. Just over two weeks later, the respondent appeared before Judge Pope for a custody redetermination. (*Id.* at 20 and 43.) The respondent did not appear at the hearing so Judge Pope called him on the telephone. (*Id.* at 20-21 and 43.) He told Judge Pope that Judge Tadal acted in an arbitrary, capricious way and she "deliberately and intentionally in bad faith" refused to entertain his client's request for bond. (*Id.* at 24 and 34.) Mr. Cane' then threatened Judge Pope, who was only trying to maintain the proper decorum in his courtroom while the respondent continued with his description of the events that occurred after the prior hearing with Judge Tadal. (*Id.* at 25-26.) Mr. Cane' told Judge Pope that if he were to interrupt Mr. Cane' again, "I'll bring you into this too. I'm almost done." (*Id.* at 26.) He then described that he was not allowed to enter the building due to an order by Judge Tadal and as a result of the "compendium of comedic imbecility by this Court" the respondent prepared and filed a writ of habeas corpus with the United States District Court, District of New Jersey.[16] (*Id.* at 26-27.) Before hanging up on Judge Pope, the respondent demanded that Judge Pope "step up and . . . speak to your people and see to it that this woman [sic] [referring to Judge Tadal] is put out of her misery." (*Id.* at 28.)

Mr. Cane's abusive conduct continued, but this time it was directed towards staff at the Elizabeth Immigration Court. (*Id.* at 47-49.) In late June 2020, the respondent sent an email to the Elizabeth Immigration Court claiming he had attached a notice of appearance and requested telephonic appearance for an upcoming master calendar hearing. (*Id.* at 48.) The filing was rejected because no notice of appearance was attached to the email. (*Id.* at 47-48.) The respondent corrected this error, without incident, but the filing was rejected again because the wrong address was provided on the certificate of service. (*Id.* at 47) Even though court staff provided Mr. Cane' with the proper address to serve his notice of appearance, Mr. Cane' responded to the rejection with belligerence and vulgar language. "No other notice will be filed. A formal complaint will be filed with the Attorney General

[16] The claim that the respondent prepared a writ of habeas corpus was an apparent fabrication. According to the United States District Court order, Mr. Cane' assisted his client with preparing the writ of habeas corpus, but it was filed by his client *pro se*. (Exh. 2 at 135 n.2.) This is because Mr. Cane' is not admitted to practice in the United States District Court, District of New Jersey. (*Id.*) Mr. Cane' sought to represent his client *pro bono*, but no petition was filed by his client requesting *pro bono* counsel and the District Court Judge stated that a motion to appear *pro hac vice* is the "proper procedure to" appear for his client in District Court. (*Id.*) It is not clear whether a motion for the respondent to appear *pro hoc vice* was ever filed.

– you can ply your bullshit, racist practices elsewhere." (*Id.*) Without further prompting or communication from the court staff, the respondent sent a second email. (*Id*. at 49.) In that second email, Mr. Cane' continued his abusive, intemperate, and contemptuous behavior. (*Id.*) He first threatened that he would file a complaint with Interpol, the United Nation's Commission on Human Rights, the United States State Department, the Peruvian press, the Embassy, and the Board. (*Id.*) He further said that the rejection of his notice of appearance is "legal folly, gibberish, the workings of unqualified small folks, asked to discharge responsibilities well beyond their proven modest intellectual grasp." (*Id.*) He then described the court as the "latest example of hard core buffoonery, petulant, cocksure bravado on the part of EOIR, the Federal Government. This is what happens when children are placed in positions formally assigned to adults." (*Id.*)

In a final act of defiance, the respondent once again acted poorly and obnoxiously when he sent an email to court staff at the Elizabeth Immigration Court. (*Id*. at 62.) This email was sent as a follow-up to a motion to continue the respondent's client's individual hearing. (*Id.*) In that email, the respondent fumed about the DHS's actions and the judges who touched the file related to his client because, Mr. Cane' claimed, his "client's wife attempted suicide." (*Id.*) He sarcastically exclaimed "Well Done !!!!" (*Id.*) Mr. Cane' further described the harm he claimed the court imposed on his client's wife calling the court (and apparently court staff) clowns and that his client's detention was a "miscarriage of Justice the size of Oklohoma [sic]!!!! You People are filthy scumbag racists!!!!!!!!" (*Id.*) He further claimed that the court did not care about the asserted miscarriage of justice, that the court could "go to Hell and you can all pound coal!!!!!!!!" (*Id.*) Finally, he boldly said that staff could show the email "to whomever you care to, I intend to!!!!! You are a bunch of severely troubled mentally ill, racist scumbag pigs. [*sic*] you know it, you like it, you get away with it!!!!!!" (*Id.*)

Staff at the Elizabeth Immigration Court were stunned and upset by Mr. Cane's conduct. (*Id*. at 51.) The Acting Court Administrator, Mr. Paul Friedman, was similarly shocked when he reviewed Mr. Cane's emails. (*Id*. at 52.) In his testimony, he stated that the email interaction was the talk of the courthouse and staff was waiting for the other shoe to drop. Mr. Friedman also stated that such conduct meant that he had to be taken away from his normal duties to escalate the issues to upper management. This requires that Mr. Friedman take time out of his day to fill out reports, forms, and notify the appropriate individuals regarding Mr. Cane's behavior.

Each of these incidents separately and cumulatively demonstrate that the respondent acted contumeliously and obnoxiously. For his part, the respondent argues that none of this conduct rises to the level of contemptuous conduct because he did not violate any court

order and he was merely zealously advocating for his clients. (Exh. 3 at 15-20.) Arguing that his conduct may have been "overzealous and possibly obnoxious[,]" Mr. Cane' repeatedly asserted that his conduct did not rise to contempt of court. (*Id*. at 20.) He even stated that perhaps he "had a few improper emotional outbursts out of frustration but they do not rise to a violation" of the ethical rules. (*Id*. at 15.)

This Court disagrees. Mr. Cane' clearly fails to understand that his behavior and conduct go well beyond zealous advocacy. To be sure, a practitioner may not be disciplined for zealously advocating for his client's interest, but there is a sliding scale between zealous advocacy and obnoxious conduct. *See* 8 C.F.R. § 1003.102 (stating that nothing in "this regulation should be read to denigrate the practitioner's duty to represent zealously his or her client within the bounds of the law."). The scales tips into contumelious conduct when the respondent acts with insolence, is abusive, spiteful, or humiliating, Blacks Law Dictionary, 9th Edition (defining contumelious conduct), or when a respondent acts offensively or objectionably, *id*. (defining obnoxious conduct).

Immigration proceedings are adversarial in nature. *Matter of W-Y-O & H-O-B-*, 27 I&N Dec. 189, 190 (BIA 2015). Such a process relies "upon the self-interest of the litigants and counsel for full and adequate development of their respective cases." *Sancher v. United States*, 72 S.Ct. 451, 455 (1952). Adversarial proceedings, at a minimum, "stimulates [] zeal in the opposing lawyers. But their strife can pervert as well as aid the judicial process unless it is supervised and controlled by a neutral judge representing the overriding social interest in impartial justice and with power to curb both adversaries." *Id*. Litigants and counsel certainly have the right to "press [their] claim, even if it appears farfetched and untenable." *Id*. These fights are fully protected by appellate courts, "with due allowance for the heat of controversy [and] . . . when infringed by trial courts." *Id*. Nevertheless, when a court adversely rules against a party "it is not counsel's right to resist it or to insult the judge—his right is only respectfully to preserve his point for appeal." *Id*. When addressing a court, lawyers "must speak, each in his own time and within his allowed time, and with relevance and moderation." *Id*.

Mr. Cane' tries to hide behind the veil of zealous advocacy to excuse his contemptuous conduct. His conduct, however, goes far beyond zealous advocacy. Counsel "never has the right to let his temper, his zeal, or his intention to lead him into disrespectful, accusative language to a court." *MacInnis v. United States*, 191 F.2d 157, 159 (9th Cir. 1951). To find that the respondent's conduct was acceptable would "demoralize the authority of the court before . . . the public." *Id*. (citation omitted). Mr. Cane's behavior was undeterred. Under the guise of zeal and passion, the respondent claims his conduct violated no court order and was not willful and intentional. The respondent is wrong. First,

he did violate court orders, when both Judges Tadal and Pope asked Mr. Cane' to stop speaking. (Exh. 2 at 3) (stating that the respondent will not allow Judge Tadal to interrupt him); (*Id*. at 6) (telling Judge Pope that he was not done and that the Court should not interrupt him or he will "bring [the judge] into this too.").

Second, Mr. Cane's language to the Court was demeaning, insulting, and as the Board observed, "unprofessional and [he used] disrespectful language. . . [which] is unacceptable and has no place in proceedings before any judicial body." (Exh. 10 at 342.) No words can properly describe the outrageous nature of the respondent's statements towards Judge Tadal and Judge Pope. By any measure, Mr. Cane's statements meet the definition of contumelious and otherwise obnoxious conduct. *See Matter of Teague*, 131 A.D. 3d 268, 270, 15 N.Y.S.3d 312 (2015) (finding that counsel who called an administrative law judge a "disgrace" and become "irate, rude, loud, and combative[]" to another judge amounted to conduct that violated the rules of professional conduct); *see also Matter of Sondel*, 111 A.D.3d at 178 (concluding that disparaging and disrespectful comments towards an Immigration Judge amounted to contumelious and obnoxious conduct).

Similarly, the respondent's statements towards court staff were also contumelious and obnoxious. He called staff names, insulted the Court, and refused to properly serve opposing counsel. (Exh. 2 at 47.) While it is true that Mr. Cane' did not address these statements directly to a judge, he did make comments directed at the court and he made these comments "with regard to a case in which he . . . act[ed] in a representative capacity, which would constitute contempt of court in a judicial proceeding." 8 C.F.R. § 1003.102(g). Like his statements to Judge Tadal and Judge Pope, Mr. Cane's email communication with court staff was contumelious and obnoxious. Had these statements been made to a judge, they would constitute contempt in any judicial proceeding. For instance, the respondent refused to properly serve his notice of appearance on the DHS (Count 3). (Exh. 2 at 47.) In fact, when requested to do so, the respondent abruptly and angrily stated that he would not comply and that he would file a "formal complaint . . . with the Attorney General – you can ply your bullshit, racist practices elsewhere." (*Id*.) Later that same day, the respondent sent another email to staff, without any reason or prompting from staff. (*Id*. at 62.) In that email, the respondent continued to use abusive, threatening, and contemptuous language. For instance, he described the rejection of the notice of appearance as "legal folly, gibberish, the workings of unqualified small folks, asked to discharge responsibilities well beyond their proven modest intellectual grasp." (*Id*.) He further insulted the Court itself by saying he has "no interest in subsidizing this latest example of hard core buffoonery, petulant, cocksure bravado on the part of EOIR, the

Federal Government." (*Id.*) To quote this vile and abusive language should be sufficient to demonstrate that the conduct is contumelious and obnoxious. Slinging unfounded allegations of racism, without any evidence to support his claim, cursing at staff for merely requiring counsel to properly serve his notice of appearance on opposing counsel, and threatening staff with filing complaints against them, is beyond the pale, and clearly falls within the ambit of 8 C.F.R. §1003.102(g). *Matter of Teague*, 131 A.D.3d at 270, 272 (finding that, among other things, imploring clerk to recalendar cases violated rules of professional conduct).

The respondent's overall behavior in all of the counts listed in the NID demonstrate a total disregard for the solemnity of the proceedings, respect for the court, and evinced a pattern of contumelious and obnoxious behavior. The respondent rudely interrupted Judges Tadal and Pope, disparaged Judge Tadal, threatened both judges with filing a complaint against them, and interrupted proceedings when he did not get his way. Such behavior are prime examples of contumelious and obnoxious conduct. *See Matter of Giampa*, 211 A.D.2d 212, 215-16, 628 N.Y.S.2d 323 (1995) (stating that "[t]hroughout these transcripts, the respondent evinced a flagrant disrespect for the judiciary and a fundamental disregard for the judicial process which he has been sworn to uphold.") This behavior overstepped the bounds of zealous advocacy and quickly devolved into contumelious and obnoxious. Consequently, this Court adopts the charge in Counts 1-4 which allege that the respondent's conduct was contumelious and obnoxious.

2. Conduct that is Prejudicial to the Administration of Justice or Undermines the Integrity of the Adjudicative Process (Counts 1 and 2)

In Count 1 and 2, the government charged the respondent with engaging in conduct that is prejudicial to the administration of justice or undermines the integrity of the adjudicative process. (Exh. 1 at 5 and 8.) For each count, the Disciplinary Counsel provided detailed allegations and quotations to describe the respondent's conduct.

a. *The Respondent's Conduct was Prejudicial to the Administration of Justice and Undermined the Integrity of the Adjudicative Process*

The respondent's conduct as discussed in Counts 1 and 2 are detailed above. The government has not only proven that Mr. Cane's conduct was contumelious and obnoxious, but it also has shown that it was prejudicial to the administration of justice and undermined the integrity of the adjudicative process. The respondent's conduct was disruptive and it prevented the judges from promptly and efficiently resolving the disputes in front of them. In each case, the respondent spoke over the presiding judge and did not allow the judge to

speak until he was done. For instance, when Judge Tadal attempted to announce the presence of the parties, Mr. Cane' interrupted her because he wanted to discuss another matter—his client's request for bond redetermination—rather than submit an application for relief, which was the purpose of the hearing. (Exh. 2 at 5-7 and 38.) He further demeaned Judge Tadal by claiming many counsel "can't stomach appearing before you." (*Id*. at 9.) He even demanded that Judge Tadal acquiesce to his motion for a bond redetermination. (*Id*.) (stating that Judge Tadal had an "obligation to entertain the application that is before the court.") Rather than engage in an argument with Mr. Cane', Judge Tadal displayed admirable restraint, calm, and judicial temperament. (*Id*. at 4-10.) She continued the case for Mr. Cane' to file relief for his client and did not react to Mr. Cane's outrageous and prejudicial actions. (*Id*. at 9-10.)

In Count 2, the respondent continued to disrupt proceedings without addressing the case before Judge Pope. (*Id*. at 22-28.) At the hearing, Mr. Cane' appeared telephonically and first disparaged Judge Tadal for requiring that a hearing be scheduled for a bond redetermination rather than conduct the hearing during removal proceedings.[17] (*Id*. at 23-28.) He discussed her "terrible reputation of [failing to hear a bond redetermination request] and that she should retire." (*Id*. at 25.) Mr. Cane' then began to disparage staff at the detention facility by calling the officer a "knuckle-dragging officer" and a "knuckle-dragging ape[.]" (*Id*.) He called another officer a "guerilla."[18] (*Id*. at 26.) After this diatribe, Mr. Cane' finally told Judge Pope that a writ of habeas corpus had been filed in federal district court thus depriving the immigration courts of bond jurisdiction in the respondent's case. (*Id*. at 27.) He also threatened to report Judge Tadal to the Board, the United States Attorney General, and to the bar to which she is admitted to practice law. (*Id*.) Judge Pope tried to interject a number of times, but Mr. Cane' would not have it. (*Id*. at 23-26.) In fact, at one point, Mr. Cane' said that if Judge Pope interrupted him again he

[17] Such a request is odd, to say the least, coming from an experienced attorney like Mr. Cane' because bond proceedings are separate from removal proceedings. 8 C.F.R. § 1003.19(d) (stating bond proceedings "shall be separate and apart from, and shall form no part of, any deportation or removal hearing or proceeding.")

[18] According to Judge Tadal, the officer Mr. Cane' referred to in such derogatory terms is "Dominican with a dark complexion[]" and Judge Tadal construed the respondent's statements "to be racially motivated." (Exh. 2 at 40.) There is a long history of using such disparaging comments against those with dark complexions as racist descriptors. For purposes of this decision, this Court need not resolve the respondent's intent behind these comments. Suffice it to say, that these comments have no place in any judicial or administrative proceeding, and are further evidence of the respondent's contemptuous and obnoxious behavior, and the effect his actions had on the administration of justice.

will "bring [Judge Pope] into this too." (*Id*. at 26.) In the end, demonstrating a total lack of respect for Judge Pope or the proceedings, Mr. Cane' instructed Judge Pope not to talk to or question his client, that he did not wish to speak to Judge Pope again, and he hoped Judge Pope would "speak to your people and see to it that this woman is put out of her misery. She needs to be put out of her misery."[19] (*Id*. at 28.) Finally, without warning or permission, Mr. Cane' abruptly hung up on Judge Pope. (*Id*.)

This conduct demonstrates an utter lack of regard to the administration of justice and undermines the adjudicative process. An Immigration Judge is obligated to timely and expeditiously resolve removal proceedings. 8 C.F.R. §§ 1003.10(b) and 1003.12. Both the Immigration and Nationality Act and the regulations governing Immigration Courts reflect "Congress's intent to streamline the deportation process." *Matter of L-A-B-R-*, 27 I&N Dec. 405, 406 (A.G. 2018). Indeed, the "United States has a strong interest in the orderly and expeditious management of immigration cases." *Id*. (citing *Alsamhouri v. Gonzales*, 484 F.3d 117, 123 (1st Cir. 2007) (internal quotation marks omitted)).

The respondent's actions amount to prejudice to the administration of justice and undermined the integrity of the adjudicative process because his actions "seriously impair[ed] or interfer[ed] with the adjudicative process" when he "should have reasonably known to avoid such conduct[.]" 8 C.F.R. § 1003.102(n). The respondent's conduct affected the orderly completion of each hearing. He personally attacked Judge Tadal and threatened her with filing a complaint against her. When Mr. Cane' appeared before Judge Pope, he threatened him when Judge Pope tried to take control of the hearing. Neither judge had the ability to say anything or control the hearing because Mr. Cane' spoke over the Court, insulted the judges, and made wild, unfounded accusations against each judge and the adjudicative process itself. These antics, which included Mr. Cane' hanging up on Judge Pope, meant that the hearing could not be completed and needed to be continued. At one point, he even threatened Judge Tadal with hoping that somebody "put her out of her misery." For this Court, such comments are easily read to mean that Mr. Cane' was threatening Judge Tadal safety, to possibly include a death threat. Whatever the actual meaning of this comment, it is clearly threatening and improper language.

---

[19] Judge Tadal took the comments made to Judge Pope about her as a threat, as sexist, and racists. (*Id*.) Mr. Cane' denies he intended to threaten Judge Tadal, or to be sexist, or racist against her. (Exh. 3 at 22-23.) As noted above, this Court need not address whether Mr. Cane' intended to threaten Judge Tadal or whether his comments were racists or sexist. It is enough that his comments have no place before any tribunal and were contemptuous, obnoxious, and prejudiced the administration of justice.

Disrespectful and abusive language towards a tribunal affects the administration of justice and undermines the adjudicative process. *Matter of Heller*, 9 A.D.3d 221, 228, 780 N.Y.S.2d 314 (2004) (finding, among other things, counsel's "perverse and persistent refusal to accept adverse rulings, reflective of an utter contempt for the judicial system, and his consistent, reprehensible, unprofessional behavior, which has included screaming at, threatening and disparaging judges" is prejudicial to the administration of justice). Wild allegations and accusations without any evidence against a judge are extremely serious and should not be made without a factual foundation. This is particularly true when an attorney makes such claims in open court for others to hear because it undermines the integrity of the adjudicative process and the impartiality of the adjudicator. The core duty of any judge "is to decide between adversar[ial] positions." *Macdraw, Inc. v. Cit Group Equip. Fin., Inc.*, 138 F.3d 33, 38 (2nd Cir. 1998). In carrying out this role, a judge "should be free [to conduct him or herself] without fear of insulting conduct or statements concerning his or her impartiality or integrity by the attorneys representing the losing party." *Id*. Courts should, obviously, give some leeway to lawyers because at times they can "lose perspective regarding the strengths or weaknesses of their case[,]" particularly when they first learn of an adverse ruling. *Id*. However, conduct that smacks of intimidation need not (and should not) be tolerated. *See id*.

The respondent's comments made in open court towards Judge Tadal and Judge Pope negatively affected their ability to efficiently conduct hearings due to Mr. Cane' outburst, personal attacks, and threats. Before Judge Pope, Mr. Cane' spent a considerable amount of time ridiculing and demeaning, and then hanging up on the Court, ensuring that nothing could be accomplished at the scheduled hearing. This conduct clearly falls within the bounds of prejudice to the administration of justice and undermines the adjudicative process. *See Matter of Heller*, 9 A.D.3d at 228; *see also Macdraw, Inc.*, 138 F.3d at 38. Therefore, the charges listed in Counts 1-4 are all adopted by this Court.

VI. DISCIPLINARY SANCTIONS

Once an adjudicating official finds that a practitioner has violated the rules of professional conduct, it must decide whether to impose disciplinary sanctions. 8 C.F.R. § 1003.101(a). Disciplinary sanctions may be imposed "against any practitioner" if the adjudicating official "finds it to be in the public interest." *Id*. An adjudicating official may disbar a practitioner from the "practice before the Board and the Immigration Courts or the DHS, or before all three authorities[.]" 8 C.F.R. § 1003.101(a)(1). A practitioner may be "suspended, including immediate suspension," from any of the above three listed authorities. 8 C.F.R. § 1003.101(a)(2). An adjudicating official may issue a "[p]ublic or private censor" or any "other disciplinary sanctions as the adjudicating official or the Board

deem appropriate." 8 C.F.R. § 1003.101(a)(3)-(a)(4). Practitioners and accredited representatives are subject to disciplinary sanctions, but attorneys who represent the federal government are not subject to the professional code of conduct in the regulations at issue in this case. 8 C.F.R. § 1003.101(b).

The regulations do not define when it is in the public interest to sanction a practitioner. Disciplinary sanctions, however, must be imposed if a practitioner "engaged in criminal, unethical, or unprofessional conduct, or frivolous behavior" as defined in the regulations. 8 C.F.R. § 1003.101(a). There is no guidance in the regulations regarding the type or length of sanction that should be imposed, even in circumstances that mandate a sanction. This Court, therefore, looks to state and federal disciplinary cases as instructive and persuasive authority in determining whether to impose sanctions and the appropriate sanction to impose.

"Disciplinary sanctions serve both deterrent and punitive functions." *In re Law Firm of Wilens and Baker*, 9 A.D.3d 213, 217, 777 N.Y.S.2d 116, 119 (2004) (citation omitted). The purpose of disciplinary sanctions is "to protect the public, the legal profession, and the legal system and deter other attorneys from engaging in unprofessional conduct." *In re Non-Member of State Bar of Arizona Van Dox*, 214 Ariz. 300, 303 (2007) (*en banc*). Disciplinary sanctions are also designed to "instill public confidence" in the state bar's integrity. *In re Abrams*, 227 Ariz. 248, 252 (2011).

A. DISCIPLINARY SANCTIONS ARE APPROPRIATE IN THIS CASE

The regulations only require disciplinary sanctions if a practitioner has engaged in "criminal, unethical, or unprofessional conduct, or . . . frivolous behavior[.]" 8 C.F.R. § 1003.101(a). The totality of the respondent's conduct as discussed in detail above, compels this Court to order disciplinary sanction against him. In summary, the respondent engaged in a pattern and practice of contumelious and otherwise obnoxious conduct by making rude, disparaging, demeaning, and threatening comments to Judge Tadal and Judge Pope. Mr. Cane's actions also prejudiced the administration of justice and undermined the adjudicative process because it interfered with the Court's ability to adjudicate the cases before it.

Mr. Cane's conduct demonstrates that it is in the public interest to sanction him. *See id*. His behavior, which is reflected in the totality of the evidence before this Court, and his actions even after repeated warnings from Disciplinary Counsel, will give little confidence to the public that it will be well-served when a practitioner uses such contempt, vitriol, threats, and unprofessional comments towards judges, staff, and the court as a

whole. His conduct also greatly affected the adjudicative process. Immigration Judges cannot efficiently resolve cases when a practitioner makes such demeaning, disparaging, unfounded attacks on the court and specific judges.

B. MULTI-FACTOR ANALYSIS TO DETERMINE APPROPRIATE SANCTION

In determining the appropriate sanction, this Court considers the respondent's history of prior disciplinary actions or warnings, the number and types of proven ethical violations and its effect on the court, his personal circumstances and experience as an attorney, and weighing the aggravating and mitigating factors in the respondent's case. In weighing all of these factors, this Court concludes that disbarment is appropriate.

1. The Respondent's History of Prior Disciplinary Actions or Warnings

Mr. Cane' has a history of informal disciplinary admonishments and letters of inquiries addressing his comments and behavior. Despite repeated warnings, Mr. Cane' continued to act with utter contempt and vicious language, designed to threaten and demean judges, the court, and court staff. The respondent was issued three preliminary inquiry letters in March 2017, November 2017, and December 2019. (Exh. 2 at 64-66, 196-99, and 215-17.) He was also issued a warning letter in June 2017 and an informal admonishment in March 2018. (*Id*. at 208-13 and 232-39.) In each instance, Mr. Cane' responded to the Disciplinary Counsel without any remorse or self-reflection that his conduct was unprofessional, rude, and contemptuous. Rather, he gave excuse after excuse for why the Court or the DHS were at fault.

The first inquiry letter served as the basis of Count 1 of the NID. This Court will not rehash the abusive, aggressive, and improper language Mr. Cane' used to characterize Judge Tadal. Suffice it to say, that the Court's characterization should be enough to remind Mr. Cane' of the language he used. Mr. Cane's response to the inquiry letter, however, is indicative of his failure to reflect on his conduct or attempt to learn from his mistake. In his response, Mr. Cane' continued to impugn Judge Tadal's integrity and belittled her by stating that she is "an arrogant, condescending, defiant, dishonest person." (*Id*. at 68.) To justify this attack, Mr. Cane' submitted a Third Circuit Court of Appeals decision that reversed Judge Tadal's finding in one case and newspaper articles about Judge Tadal. (*Id*. at 68 and 87-133.) At no point did Mr. Cane acknowledge that his behavior was contemptuous and obnoxious.

March 2017 was the first time Mr. Cane' was asked about his language and conduct before an Immigration Judge. (*Id*. at 196-99.) In that letter, Mr. Cane' was asked to

respond to his interaction with Judge Shifra Rubin at a master calendar hearing on December 29, 2016. (*Id*. at 196.) The Disciplinary Counsel characterized Mr. Cane's conduct as "highly agitated" and that he cut off Judge Rubin, interrupted and talked over her several times, and he shouted during the hearing. (*Id*. at 196-97.) The respondent also repeatedly failed to answer the Court's questions directly and repeatedly refused to follow the Court's order to provide a narrative of the procedural history of the case. (*Id*. at 197-199.) Once again, rather than taken any responsibility for his actions, Mr. Cane' blamed Judge Rubin for failing to be prepared and demeaned Judge Rubin as being "shamefully unprepared and unprofessional[.]" (*Id*. at 201.) Mr. Cane' even went so far as to call Judge Rubin, "Ms. Rubin," in an obvious attempt at diminishing Judge Rubin's role as a duly appointed Immigration Judge. (*Id*. at 202-05.) The respondent's response is dripping with sarcasm towards Judge Rubin and the attorney who sent Mr. Cane' the inquiry letter. (*Id*. at 202.) Mr. Cane' continued to demean and belittle Judge Rubin and the Immigration Court system as a whole. (*Id*. at 203) (implying that the Judge Rubin was presiding over a "third-world, kangaroo court" and stating that Judge Rubin has "no authority to order" the respondent to "lift so much as a paper clip" to facilitate his client's removal.) Finally, the respondent admitted that he used a "contumelious tone," but asserted he would not apologize for such conduct because he was protecting his client's constitutional rights "from such ludicrous misconduct." (*Id*. at 204.) It is abundantly clear from Mr. Cane's response that he has little respect for anybody presiding over removal cases, the Disciplinary Counsel's office, or anybody who stands in his way.

As a result of his conduct, Disciplinary Counsel issued a warning letter to Mr. Cane' based on his behavior before Judge Rubin and his response to the inquiry. (*Id*. at 207-12.) This letter detailed Mr. Cane's contemptuous behavior, but concluded that his conduct did not rise to the level of a lack of competence or reasonable diligence and promptness in representing his client. (*Id*. at 207-12.) Mr. Cane' was also put on notice that "similar misconduct in the future could result in disciplinary charges being filed against" him. (*Id*. at 213.)

This warning, however, did little to curb Mr. Cane' obnoxious behavior. Just five months later, in November 2017, the respondent continued his contemptuous and obnoxious behavior. This inquiry letter centered on a motion Mr. Cane' wrote in October 2017, where he disparaged Judge Rubin once again. In his motion to the Court, Mr. Cane' described Judge Rubin's actions as having "*disrespectfully, unprofessionally, and offensively barked out* the [hearing] date . . . without first inquiring as to [Mr. Cane's] availability." (*Id*. at 216) (emphasis in original.) In a repeat of his prior tone, Mr. Cane's response to the November 2017 inquiry letter was filled with hateful, disrespectful, vile

insults and characterizations of Judge Rubin. For instance, Mr. Cane' stated that "Judge Rubin mistakenly believes that she can abuse, insult, and denigrate those who appear before her in the EOIR Removal Process, and run to her colleagues and allege misconduct when it is she who is the perpetrator of egregious ethical and professional misconduct and racist insults." (*Id*. at 222.) He further demeaned Judge Rubin by stating she is not a "qualified jurist" because she filed a complaint against Mr. Cane' for his behavior and that he has a right to "challenge Judge Rubin when she exhibited malicious, racist propensity against" his client. (*Id*.) Mr. Cane' described his obligation as an attorney by asserting that he must ensure his client's constitutional rights are protected. (*Id*.) He also asserted that as "an officer of the court [he must] protest the display of grotesque, deliberate, belligerent misconduct of Judge Rubin is not diminished by the hollow, pathetic, dishonest allegations against me." (*Id*.) He asserted that his actions were "grounded in [his] professional obligation to defend [his] client, and [he] will not be silenced by an angry, petty despot, who holds [his] client and [him] in utter despicable disregard." (*Id*. 222-23.) He then further demeaned Judge Rubin claiming that he had never encountered such "palpable hostility, bias, and aggression" in his thirty years of practicing law. (*Id*. at 223.) Never once did Mr. Cane' accept responsibility for his actions, tone, behavior, or utter contempt for Judge Rubin.

As a result of the November 2017 inquiry letter, in March 2018, the Disciplinary Counsel once again sent Mr. Cane' a warning letter that his conduct in his motion to Judge Rubin violated the ethical rules governing appearances before the Immigration Courts. (*Id*. at 236-39.) Mr. Cane' was once again informally admonished for filing a motion with the court that "unnecessarily use[d] disrespectful and inflammatory language." (*Id*. at 237.) Furthermore, the informal admonishment letter stated that the respondent's motion to Judge Rubin questioned the court's "integrity and allege[d] that she is 'biased' and 'racist.'" (*Id*.) Finding that the allegations were unfounded, the Disciplinary Counsel stated that such "language has no place in a motion for a continuance based on counsel's unavailability." (*Id*.) Finally, the Disciplinary Counsel correctly inferred that the only "logical conclusion" for such word choice is that Mr. Cane' was "attempting to further abuse, harass, annoy, and belittle Judge Rubin." (*Id*. at 238.)

Despite numerous inquiry letters and informal admonishments, Mr. Cane' failed to correct his behavior. He instead continued to double down on his conduct, apparently undeterred by Disciplinary Counsel's repeated attempts to rein in his contemptuous and obnoxious conduct. No inquiry letter or informal admonishment did the trick. Instead, Mr. Cane' held steadfast to his belief that his conduct is above reproach and the conduct of others, particularly judges with whom he disagrees, are the real culprits. Given these

circumstances, Disciplinary Counsel elevated the matter by initiating proceedings in August 2020 with the filing of the NID.

Not even the commencement of these disciplinary proceedings, however, gave Mr. Cane' any pause to reflect on his conduct or behavior. In October 2020, just two months after these proceedings began, Mr. Cane' continued to be abusive, disrespectful, and disparaged Judge Pope. (Exh. 10 at 245-67.) Mr. Cane's client was scheduled for an individual hearing on October 29, 2020. (*Id*. at 249.) A motion to recuse Judge Pope was filed the afternoon before the individual hearing and refiled the day of the hearing. (*Id*. at 250-51.) The motion argued that Judge Pope should recuse himself because he denied the respondent's client's bond redetermination request. (*Id*. at 251) Judge Pope noted that he would not issue a written decision that day, but that he had "given full consideration to the merits of the motion for recusal" and he concluded that the motion was "without merit[.]" (*Id*.) The judge then attempted to "proceed to the merits of the . . . . cancellation of removal claim." (*Id*.)

Rather than accept the ruling and preserve it for appeal, Mr. Cane' began a lengthy rant, spanning 7½ pages of transcripts, where Mr. Cane' insulted and disparaged Judge Pope and the Immigration Court system as a whole. (*Id*. at 251-259.) Even though Mr. Cane' was given an opportunity to air his concerns and speak uninterrupted, he was not satisfied with Judge Pope's decision to provide a written decision on the motion to recuse at a later time. (*Id*. at 259.) Rather, he attempted to speak to his client to instruct him not to partake in the proceedings. (*Id*. at 259-61.) Mr. Cane' also accused Judge Pope of already deciding to deport his client. (*Id*.) He further asserted, without any evidence, that Judge Pope violated "the attorney client privilege" and demanded to "speak to [his] client." (*Id*. at 265.)

The respondent continued to interrupt Judge Pope, and then he instructed his client "to not proceed with this hearing." (*Id*. at 266.) Mr. Cane' then said that his client should "resign from the proceedings immediately[]" and that he too would resign in protest. (*Id*.) Before abruptly hanging up on the Court, Mr. Cane' slung one last insult, claiming that Judge Pope should deport his client because he already wanted to do that, and he hurled one last threat that he will see Judge Pope "in the Appellate Court." (*Id*.) Judge Pope continued with proceedings against Mr. Cane's client without the respondent.[20] (*Id*. at 266-67.)

---

[20] Apparently, Mr. Cane's had failed to appear for a number of hearings for his client's case and Judge Pope had previously warned the client that proceedings would not be halted if his

Mr. Cane' continued his over-the-top, abusive language, attacks, and unfounded accusations after the October 2020 hearing. This time his wrath was directed toward the prior Adjudicating Official and Disciplinary Counsel. He repeatedly insulted, degraded, and disparaged the prior Adjudicating Official, Disciplinary Counsel, and staff assigned to assist the prior Adjudicating Official.[21] For instance, when staff attempted to schedule a pre-hearing conference with Mr. Cane' and requested the parties availability, Mr. Cane' initially stated that he is unavailable until January 15, 2022. (Exh. 7 at Tab 1.) Staff professionally acknowledged Mr. Cane's statement that he was unavailable until January 15, 2022. (*Id*. at Tab 1.) The next day, true to form and without any provocation, Mr. Cane' wrote a lengthy email laden with insults, vicious attacks, and disparaging language. (*Id*. at Tab 2.) (using brash, uncivilized language, and arguably stalking the prior Adjudicating Official by viewing his LinkedIn page).

Mr. Cane' continued his name-calling just days before the scheduled disciplinary hearing. He described Disciplinary Counsel as having a learning disability, being ethically, mentally, and professionally challenged, and that Disciplinary Counsel was disturbingly incompetent. (Exh. 10A.) Mr. Cane' also spewed disdain for the proceedings before this Court, stating that he had informed the prior Adjudicating Official "354 times that [he was] unavailable to attend the scheduled hearing." (*Id*.) He then demanded staff "advise [her] colleagues" that he had filed "two Notices of Claim as well as the Federal Injunction" that will be filed in Federal District Court. (*Id*.) As a result of these filings, Mr. Cane demanded that all involved recuse themselves from these proceedings. (*Id*.)

In his brief to the Board, the respondent argued that his conduct was isolated and stemmed, in part, from losses he suffered in 2017 and 2018, and because he suffers from depression. (Exh. 3 at 25.) The behavior detailed above contradicts this defense. Mr. Cane's actions before disciplinary proceedings commenced, after the NID was filed, and while they have been in progress, has been the same. He has failed to curtail his actions, behavior, tone, and conduct. He is undeterred by the prospect of sanctions. He continued with his contemptuous and obnoxious conduct, and tried to prejudice these disciplinary

attorney again failed to appear. (Exh. 10 at 266.) By hanging up the phone, Mr. Cane' effectively failed to appear and Judge Pope proceeded without him. (*Id*. at 266-67.)

[21] To be sure, Mr. Cane' later apologized to Court staff supporting the prior Adjudicating Official, but he initially sent aggressive, demeaning, and threatening emails to her too. (Exh. 7 at Atch. 1; Exh. 10A at 376.)

proceedings by filing documents in federal court in an attempt to intimidate the prior Adjudicating Official and Disciplinary Counsel. Such behavior warrants severe sanctions.

2. The Number and Type of Proven Ethical Violations and Its Effect on the Court

As noted above, the government has charged the respondent with violating two rules of professional conduct before the Immigration Courts in 4 separate counts. (Exh. 1.) Those violations have been proven by the government through the abundance of evidence submitted by Disciplinary Counsel. (Exh. 1; Exh. 2; Exh. 7; Exh. 10; Exh. 10A; Exh. 11.) "While it is correct to say that the number of proven ethical transgressions is an important factor in determining the proper sanction . . . it would be a mistake to conclude that a relatively small number of such established events will predictably result in a" particular sanction. *In re Hankin*, 296 A.D.2d 238, 240, 745 N.Y.S.2d 169 (2002).

To be sure, the government has not charged the respondent with violating a large number of ethical rules, but the manner and extent of his violations are egregious. The respondent treated the Immigration Judges he appeared in front of as a nuisance, who were merely in his way and needed to be bullied, threatened, demeaned, or silenced by any means necessary. He argues in his reply to the NID that his actions were impolite, overly zealous advocacy. (Exh. 3-15.) This characterization of Mr. Cane's actions is belied by his own words to the judges and staff. He cut off Judges Tadal and Pope in two separate hearings, he demeaned Judge Tadal by stating that she had a "terrible reputation" and that he knew many "attorneys who can't stomach appearing before" her. (Exh. 2 at 9-10.) He threatened Judge Tadal with filing a formal complaint with the Board and her state bar licensing board. He also demanded that she resign.

Less than a month later, Mr. Cane' continued his disrespectful behavior towards Judge Tadal, but this time his ire was also directed at Judge Pope. He described to Judge Pope his frustration with Judge Tadal and again maligned her reputation. (Exh. 2 at 6-7.) He once again threatened to file a complaint with the Board and her state bar, but this time he added the United States Attorney General and the press. (*Id*. at 7.) He then topped off his malicious verbal assault by demanding that Judge Pope "step up and speak to your people and see to it that this woman is put out of her misery. She needs to be put out of her misery." (*Id*. at 8.) Without permission, Mr. Cane' then hung up the phone. (*Id*.)

This behavior did not end with his interactions with Judges Tadal and Pope. Instead, he began to treat court staff with distain. For instance, he cursed at staff, called them racist, threatened them with an INTERPOL warrant, and referred to them as incompetent children.

(*Id*. at 8-9.) He used further abusive language in another interaction with staff by calling them "filthy scumbag racists[,]" and "troubled mentally ill" people. (*Id*. at 10.)

This conduct is beyond the pale and it is certainly more than mere advocacy. The respondent's remarks to the court and court staff were *per se* contemptuous. His conduct was "calculated to provoke and to bring undue pressure upon the Court in the making of various rulings during the course" of proceedings. *United States v. Schiffer*, 351 F.2d 91, 94 (6th Cir. 1965). Attorneys, like humans in contexts less heated than the adversary system, can make intemperate remarks that upon reflection outside of the heat of battle are clearly mistakes. But Mr. Cane's words and actions do not fall within that ambit. These were not "isolated outbursts in the heat of a trial, but rather deliberate, continuous and repeated acts, extending" to two hearings and various interactions with staff. *Id*. Counsel obviously has the "full right to present forcefully to the Court his claims in order to obtain a ruling, even though the presentations may be far fetched and untenable." *Id*. But after he obtained a ruling from the Court, Mr. Cane' "had no right to resist it nor to insult" the judges. *Id*. Mr. Cane' made "unfounded accusations reflecting on the dignity, integrity and impartiality of the Court. This conduct cannot be countenanced" in any court. *Id*. This factor weighs heavily against the respondent.

3. The Respondent's Personal Circumstances and Experience as an Attorney

Mr. Cane' is an experienced litigator and by his own admission, he has been practicing law for 30 years. (Exh. 3 at 25.) Other than the disciplinary actions discussed above, the Court has no evidence of any other disciplinary actions taken against the respondent. While the respondent's seemingly non-existent disciplinary record weighs in the respondent's favor, his lengthy experience also demonstrates that he should know better. Three decades of experience means that the respondent is well-aware of his ethical obligations to be courteous to the court and court staff, and he is also aware that he should not use abusive language in pleadings, in open court when addressing a judge, and should not address court staff with such vitriol and abusive language. The respondent's own actions demonstrate his knowledge of his ethical obligations based on how he interacted with judges in other courts. (Exh. 10 at 369-71) (discussions with Assistant United States Attorney on a criminal case in United States Federal District Court.) Mr. Cane' was well aware that his conduct towards court staff was, at a minimum, unconscionable. In August 2020, just after the NID was filed with the Board, Mr. Cane' wrote a letter to court staff at the Elizabeth Immigration Court. (*Id*. at 244.) In his letter, Mr. Cane' stated that he owed the entire staff "an unconditional apology." (*Id*.) He lauded the staff, exclaiming that they are "best in class," and that they "report to work, do [their] jobs, and [they] do it well."

(*Id.*) He admitted that staff never treated the respondent, his clients, or their families with "anything other than respect, courtesy, [*sic*] professionalism." (*Id.*) Directly after his apology, he stated the following. "I, on the other hand, have been disrespectful, abusive, offensive, both in speech, [*sic*] manner. I have taken a week to reflect. I failed to conduct myself as an attorney, [*sic*] gentleman. It will not happen again." (*Id.*)

Mr. Cane' even seemed to be tempered, for a brief moment, when he was first served the NID. (Exh. 10 at 242.) After acknowledging receipt of the NID and the government's initial exhibits, Mr. Cane' stated that he recognized "the unacceptable nature, [and] gravity of [his] misconduct." (*Id.*) He also apologized to everyone he "steamrolled over, insulted, offended – something [he claimed to] have a greater talent for than practicing law." (*Id.*)

Mr. Cane' has continued to act in a contemptuous and an obnoxious manner throughout these disciplinary proceedings. When staff sent Mr. Cane' information related to how to appear for the disciplinary hearing, he stated that he would not attend the hearing because he previously notified the prior Adjudicating Official that he could not appear. (Exh. 10A at 376.) He further stated that staff should tell her colleagues "to knock themselves out at the 'Hearing' , , , , [sic] as if anyone of them have ever stepped foot inside an Article 3 court, or small claims court, as anything other than a tourist." (*Id.*) (commas in original). Then Mr. Cane' again called Disciplinary Counsel names and threatened him with having two claims filed against him in federal court. (*Id.*) Finally, he sought recusal of all involved in the disciplinary hearing as "co-conspirators,, accessories after the fact to the multiple felonies, instances of mail / wire fraud EOIR / BIA / DHS have committed." (*Id.*) (all commas in original). He ended his correspondence with staff by stating that the staff person's name "will not appear on this disgraceful indictment of just how filthy, corrupt, terminal Pig Entity EOIR / DHS / BIA have proven themselves to be."[22] (*Id.*) The respondent's behavior persisted in a contemptuous and obnoxious manner, even after this Court issued an order warning the parties to act in a professional manner in all correspondence to court staff, opposing parties, and in motions filed with the Court. (Exh. 8 at 2.)

[22] Mr. Cane's demand that this Court recuse itself is without merit. He has failed to provide any evidence that would support his request that the Court recuse itself. Merely threatening or even filing frivolous claims against a Court for the apparent sole purpose of delaying disciplinary proceedings is not a basis to grant a demand of recusal. *See Matter of Exame*, 18 I&N Dec. 303, 306 (BIA 1982) (citing *Davis v. Board of School Comm'rs*, 517 F.2d 1044) (5th Cir. 1975)); *Liteky v. United States*, 510 U.S. 540, 567 (1994) (stating that judicial rulings alone "almost never constitute a valid basis for a bias or partiality motion.")

In a number of correspondence that is part of the record, it appears that the respondent has had some health issues. He has claimed major dental issues, being severely sick with the flu, and experiencing a severe adverse reaction to the COVID-19 vaccination. (Exh. 3 at 25; Exh. 7 at Tab 1.) Other than the respondent's claims, there is no evidence in the record to demonstrate the effect, if any, these health issues would have on the respondent's demeanor or personality. Indeed, this Court encouraged the parties to file a motion prior to the disciplinary hearing, establishing good cause for a continuance by "detailing the reasons" for the request. (Exh. 8 at 1.) The order was a clear invitation to the parties to provide a reasoned basis to continue proceedings and for this Court to discern if there were any medical issues that would explain the respondent's behavior. No formal motion to continue was filed by either party. Due to the lack of evidence to support his claimed health issues, this Court cannot conclude that these alleged issues contributed in any way to the respondent's behavior.

4. The Existence of Aggravating and Mitigating Circumstances

There are a number of aggravating and mitigating factors in this case. The aggravating factors include—(1) the pattern of misconduct and the egregious nature of the misconduct; (2) multiple and repeated violations of the professional code of conduct even after being warned and issued two letters of admonishment; (3) the respondent's refusal to acknowledge his misconduct; and (4) his continued contemptuous and obnoxious behavior after the NID was filed and toward the prior Adjudicating Official and Disciplinary Counsel. *See Matter of Levine*, 174 Ariz. 146, 171 (1993) (*en banc*). The respondent's conduct spanned a short-period, but it included harsh, unprofessional, contemptuous and obnoxious behavior towards two judges, and another judge for which he was previously admonished.

This conduct is particularly troubling given the respondent's extensive experience as an attorney (30 years) and his refusal to curb his behavior after repeated opportunities to do so. Rather than take responsibility for his actions, Mr. Cane' blamed the judges, the DHS, Disciplinary Counsel, and staff for his conduct. While he took responsibility by sending a letter of apology to staff at the Elizabeth Immigration Court and acknowledged his misconduct when he was first served with the NID, he continued his abusive conduct towards Disciplinary Counsel, the prior Adjudicating Official, and a judge after the NID was filed. Whatever the explanation, the respondent failed to appreciate that he repeatedly and willfully acted contemptuously and undermined the administration of justice. *See Matter of Levine*, 174 Ariz. at 172 (stating that a pattern of misconduct may occur if a practitioner either faces disciplinary sanctions "with a prior disciplinary record involving

the same or similar wrongdoing, or when a [practitioner's] misconduct involves multiple clients").

Moreover, in his response to the NID, the respondent argued that he was merely a zealous advocate for the neediest among us. While the sentiment is admirable and should be encouraged, this Court finds that his conduct stepped far beyond the bounds of ethical conduct. Zealous advocacy cannot be used as a talisman to excuse unethical behavior. "There is a point were mere words are so offensive and so unnecessary that their very utterance creates a delay which is an obstruction of justice." *United States v. Thoreen*, 653 F.2d 1332, 1340 (9th Cir. 1981) (citation and internal quotation marks omitted). This is because ethical "standards establish the outermost limits of appropriate and sanctioned attorney conduct." *Id*. It matters not whether counsel's statements are calm and subdued, "[f]louting a court's command in a polite, respectful, and subdued manner has been found to be the essence of obstructing the administration of justice." *Id*. (citation and internal quotation marks omitted). To ensure fairness in any adversarial proceeding, hearings "must be conducted in an atmosphere of respect, order, decorum and dignity befitting its importance[,]" otherwise such proceedings would devolve into a free-for-all, without any solemnity towards the seriousness nature of the proceedings. *Matter of Cohen*, 370 F.Supp. 1166, 1174 (S.D.N.Y. 1973). "Membership in the bar is a privilege burdened with conditions. An attorney is received into that ancient fellowship for something more than private gain. He becomes an officer of the court, and, like the court itself, an instrument or agency to advance the ends of justice." *In re Synder*, 105 S.Ct. 2874, 2880-81 (1985) (citation, internal brackets, and quotation marks omitted). The power of being a member of the bar and an officer of the court cannot be understated. These dual roles provide attorneys the "singular power[] that others do not possess; by virtue of admission, members of the bar share a kind of monopoly granted only to lawyers." *Id*. at 2881. For instance, a "lawyer can cause persons to drop their private affairs and be called as witnesses in court, and for depositions and other pretrial process that, while subject to the ultimate control of the court, may be conducted outside courtrooms." *Id*. This license "granted by the court requires members of the bar to conduct themselves in a manner compatible with the role of courts in the administration of justice." *Id*.

Judges are certainly not above reproach and "whenever there is proper ground for serious complaint against a judge, it is the right and duty of a lawyer to submit his grievances to the proper authorities[.]" *Macdraw, Inc.*, 994 F.Supp. at 455 (citing *People ex rel. Chicago Bar Ass'n v. Metzen*, 291 Ill. 55, 125 N.E. 734, 735 (1919)). In this case, however, neither Judges Tadal nor Pope did anything to provoke such outrageous behavior by Mr. Cane'. As such, Mr. Cane' cannot be allowed to simply make scurrilous accusations

against said judges without any evidence or reason. "[P]ublic interest and the administration of justice demand that the courts should have the confidence and respect of the people." *Id*. (citing *Metzen*, 125 N.E. at 735). To instill such confidence and respect, courts must not permit "[u]njust criticism, insulting language, and offensive conduct toward judges personally by attorneys, who are officers of the court, which tend to bring the courts and the law into disrepute and to destroy public confidence in their integrity[.]" *Id*. (citing *Metzen*, 125 N.E. at 735.) Mr. Cane' "engaged in undignified and discourteous conduct that was both degrading to the Court and prejudicial to the administration of justice." *Id*.

To be sure, "the law of contempt is not made for the protection of judges who may be sensitive to the winds of public opinion." *Craig v. Harney*, 331 U.S. 367, 376 (1947). "Judges must be men [and women] of fortitude, able to thrive in a hardy climate." *Id*. Nevertheless, it is possible that "a campaign could be so managed and so aimed at the sensibilities of a particular judge and the matter pending before him [or her] as to cross the forbidden line." *Id*. That is exactly what has occurred here. This Court will not rehashing each episode of Mr. Cane' abusive, contemptuous language and behavior, but suffice it to say that Mr. Cane's conduct was not merely something that overly sensitive judges were incapable of managing. Rather, his conduct struck at the heart of contemptuous and obnoxious behavior that was prejudicial to the administration of justice and undermined the adjudicative process. His statements were unfounded, belligerent, insulting, and offensive towards judges and staff. Such behavior is not merely the musings of a zealous advocate who was overly passionate for his client's cause. Instead, his conduct disrupted proceedings, as he did not allow Judges Tadal or Pope to speak or resolve the matter before them without repeated obnoxious interruptions and unfounded accusations. Such conduct certainly crossed a forbidden line.

The mitigating factors in the respondent's case include an absence of a formal prior disciplinary record, his 30 years of practice, his temporary apology and display of remorse to the Elizabeth Court staff, and his initial acknowledgement of wrongdoing upon receipt of the NID. *See Matter of Levine*, 174 Ariz. at 172. Had the respondent appeared before the Court, it is possible that he would argue that his health was a significant contributing factor for his behavior. (Exh. 3 at 25; Exh. 7 at Tab 1.) Without additional information, which could have included the respondent's testimony at the disciplinary hearing, this Court is left with little information to assess whether his health impacted his behavior.

In weighing the aggravating and mitigating factors in the respondent's case, this Court concludes that the aggravating factors far outweigh the mitigating factors. To be sure, it is admirable, and a significant mitigating factor, that the respondent has helped

many underrepresented individuals in immigration proceedings and is passionate about his representation of them. Great weight has also been given to the respondent's lengthy and apparent "unblemished disciplinary record" over the course of his representation various clients in the past 30 years. *See Matter of Mulhall*, 159 Ariz. 528, 532 (1989) (finding an unblemished record prior to misconduct as a mitigating factor).

Despite these significant and weighty mitigating factors, the aggravating factors in the respondent's case are repeated, egregious, and substantial, and they far outweigh the mitigating factors in his case. The respondent repeatedly used abusive, obstructive, contemptuous, and obnoxious language towards judges, the Court as a whole, and Court staff. His behavior did not change even after being issued three inquiry letters and two letters of admonishment to cease such obstructive behavior. . Mr. Cane' did not even halt his behavior after these disciplinary proceedings commenced. Rather, the respondent doubled down in his explanation for his conduct in response to the inquiry letters and failed to change his behavior at all. He continued undeterred as if he had no qualms with treating anybody who came before him with utter contempt, in an unsuccessful attempt at persuading the decision-makers to rule in his client's favor. Such behavior is unacceptable and cannot be tolerated by any court. *In re Dyer*, 931 N.Y.S 2d 585, 586-88 (2011) (stating that, among other things, remedial measures is a factor to consider when issuing disciplinary sanctions). More is at stake than the insults hurled at Judges Tadal and Pope, or towards Court staff, even though they have been "unfairly and falsely assailed in the conduct of [their] official duties[.]" *In re Chopak*, 66 F.Supp. 265, 271 (E.D.N.Y. 1946), *aff'd*, 160 F.2d 886 (2d Cir. 1947). "Such conduct as this record reveals on the part of [Mr. Cane'], however, so far transcends the right of fair comment as to confront [this Court] with the necessity of either taking corrective action, or confessing that the Court lacks both the character and the capacity to administer" an attorney's ethical behavior. *Id*.

In the end, the respondent has failed to take responsibility for his actions, save the an apology letter to Court staff and his acknowledgement of wrong doing when he was served the NID, or correct them after repeated letters of admonishment, or while these disciplinary proceedings were in progress. He continues to deflect responsibility for his actions by blaming judges, staff, or hiding behind claimed zealous advocacy. Even though the respondent has been an attorney for 30 years, he has failed to recognize that his failure to take responsibility and his continued deflection of blame, is even more reason to exact severe punishment for his actions.

//

//

C. The Appropriate Sanction

As noted above, the regulations give this Court no guidance on the type or length of sanction that it should impose, even in circumstances that mandate a sanction. From the broad language in the regulations, this Court concludes that it has wide discretion to fashion an appropriate sanction based on the factors discussed above.

In determining the appropriate sanction, this Court "bear[s] in mind that the primary objectives of lawyer discipline are (1) to protect the public and the courts and (2) to deter the disciplined attorney and others from engaging in the same or similar conduct." *Matter of Alexander*, 232 Ariz. 1, 16 (2013) (*en banc*) (citation, internal quotation marks, and brackets omitted). "Fulfilling these objectives promotes confidence in the integrity of the disciplinary process." *Id*. (citation omitted). Disciplinary sanctions are "not intended to punish the disciplined lawyer, although it may have that effect."[23] *Id*. (citation omitted).

In considering the entire record and the factors discussed above, this Court concludes that disbarment from the practice before the Immigration Courts, the Board, and the DHS is appropriate. In fashioning an appropriate sanction, this Court weighs the factors discussed above and finds that the respondent's conduct and his inability to accept responsibility for his actions requires such a harsh sanction. Moreover, the issued sanction is appropriate because of the respondent's repeated failure to reflect on his actions and change his course of conduct, which indicates that the respondent's behavior will not change with a lesser sanction. He has been warned twice to cease conducting himself in such a contemptuous and obnoxious way, but he failed to do so. He even failed to correct his behavior towards judges after he was served the NID, or towards the prior Adjudicating Official and Disciplinary Counsel. The respondent's conduct demonstrates a total disregard for the rules that govern the practice of law before the Immigration Courts. This behavior diminishes "the confidence a client has in his attorney and" detracts "from the integrity of the legal profession . . . in the eyes of the public at large." *Matter of Breen*, 171 Ariz. 250, 255 (1992)

This Court looks to "the most serious charge [of misconduct which] serves as the baseline for" the sanction to be imposed. *In re Moak*, 205 Ariz. 351, 353 (2003) (*en banc*) (citing *In re Cassalia*, 173 Ariz. 372, 375 (1992)). The less serious charges are assigned

[23] Normally, a proportionality review would be appropriate to determine how other respondents were sanctioned to ensure proportionate sanctions for similar conduct. *Matter of Alexander*, 232 Ariz. at 15. A proportionality review in this case, however, is of little help because this Court is unaware of a similar or comparable case. *Id*. Consequently, this Court tailors the sanction imposed to the "unique circumstances of this case." *Id*. (citation omitted).

"aggravating weight." *Id*. (citing *Matter of Cassalia*, 173 Ariz. at 375)). "Membership in the bar is a privilege burdened with conditions. An attorney is received into that ancient fellowship for something more than private gain. He becomes an officer of the court, and, like the court itself, an instrument or agency to advance the ends of justice." *In re Synder*, 105 S.Ct. at 2880-81 (citation, internal brackets, and quotation marks omitted).

The respondent failed on all fronts to live-up to his role and responsibility as an attorney, burdened with the privilege of membership in the bar. He failed to conduct himself in the manner commensurate with the role of courts to administer justice. Instead, he was antagonistic, rude, and attacked the judges he appeared before without regard to the truth of his accusations or the effect it may have on the proceedings before the judge. Nor did counsel take into account the effect his actions would have on the legal profession or the court system as a whole. Instead, he lashed out in an apparent attempt to intimidate judges to act in the way he sought fit. Such behavior is inexcusable, particularly when the respondent was warned more than once to end his obstructive behavior.

The respondent's conduct was also prejudicial to the administration of justice and undermined the integrity of the adjudicative process. The respondent acted in a manner that nearly halted two hearings so that he could insult and ridicule the judges he was appearing before. In one instance, Mr. Cane' made his statement and abruptly hung up on the judge. As a result, the judge was unable to complete the hearing and he had to continue it to another date. In arriving at the sanction in this case, this Court has weighed all of the factors discussed above and found that the respondent's conduct is egregious especially in light of his extensive experience and repeated opportunities to correct his behavior. This Court has also considered the respondent's request in his response to the NID.

In his reply to the NID, the respondent argues that it "may be difficult to comprehend the pressure and personal involvement that an immigration attorney has with his clients, however, it is like no other area of law." (Exh. 3 at 17.) In immigration proceedings, the respondent argued, clients "put their complete trust in the attorney and expect zealous representation." (*Id*. at 17-18.) According to the respondent, it is often times difficult, "to toe the line between zealous and overzealous representation, but it is this passion that is required in the practice of law." (*Id*. at 18.) To justify his actions, the respondent asserted that it is "sometimes difficult for an attorney [to] mute his frustration in a tribunal when he knows that his client is being wronged and that his client's family will have to suffer for many more weeks or months if bond is not granted." (*Id*.) He further cited to circuit court case law that criticized Judge Tadal, in an apparent attempt to justify his behavior towards her. (*Id*. at 18-19.) The respondent also stated that his actions did not prejudice the administration of justice or undermine the integrity of the adjudicative process because he

was ultimately victorious in federal district court. (*Id*. at 20.) Finally, the respondent argued that a 3-year suspension is outside the bounds of worse conduct by others who were disciplined by the Immigration Court. (*Id*. at 23-25.)

The respondent fails to fully appreciate the effect his conduct had on the court, the court staff, and the profession as a whole. His conduct was inexcusable by any measure. As noted above, zealous advocacy does not give the respondent *carte blanche* to act petulantly or the right to abuse judges and court staff. *Matter of Cohen*, 370 F.Supp. at 1174 (stating that "an attorney is under a duty to represent his client with vigor and fidelity, this duty is not without its limits; it does not permit an attorney to misconduct himself in the pursuit of his client's interests.") Nor does a circuit court opinion about a judge's conduct give an advocate the right to disrespect a judge or the serious nature of the proceedings before her.[24] *Delgadillo v. Carmichael*, 332 U.S. 388, 391 (1947) (reasoning that "[d]eportation can be the equivalent of banishment or exile.") (citation omitted). Judge Tadal could have found the respondent's client had abandoned his opportunity to file any relief from removal and order him removed from the United States to his country of origin. 8 C.F.R. § 1003.31(c) (stating that an Immigration Judge shall find an application abandoned if a party fails to file it by a court-imposed deadline).

Counsel's claim that his actions are less serious than those who were punished less severely is also off the mark. His conduct is arguably more dangerous, insidious, and inexcusable than the examples he provided. The prior disciplinary cases discussed in the respondent's brief include a 16-month suspension for engaging a legal assistant to appear telephonically as if he was counsel (*In re Peter Singh*, D2013-347); indefinite suspension for engaging in employment as an attorney when he lacked authority to do so (*In re Anselm Andrew*, D2013-237); disbarment for submitting false evidence (*In re Richard Mendez*, D2015, 0066); disbarment for submitting false evidence 39 different times (*In re Michaelangelo Rosario*, D2013-112). (Exh. 3 at 24.) In each of these instances, it is unclear whether the respondents were warned to cease the conduct that ultimately became the focus of their discipline. That is a key component to this Court's decision to disbar the respondent from practicing before the Immigration Court, the Board, and the DHS. This is because the respondent continued to engage in obnoxious, contemptuous, and unethical behavior long after he was repeatedly warned to correct his actions. Whenever he was confronted with his insolent behavior, he failed to take any responsibility for his actions.

---

[24] When these proceedings began, the government sought a 3-year suspension as a sanction against Mr. Cane'. (Exh. 1 at 12-13.) By the end of these proceedings, the Disciplinary Counsel sought to disbar the respondent based on his conduct in subsequent cases and his actions while disciplinary proceedings were pending. (Gov't Brief In Support of Disciplinary Charges at 1.)

Instead, he deflected blame to others, doubled-down on his attacks on Judge Tadal, and even questioned the integrity of officials from the Disciplinary Counsel's office.

To be sure, some prior misconduct cases dealt with serious violations of the code of ethics, such as providing false information to the courts. Nevertheless, the respondent's behavior cuts to the heart of the integrity, professionalism, and respect of the court itself. To allow such brazen, unfiltered, rude conduct without severe sanction would undermine the trust and respect of the Immigration Court system. No attorney would dream to act in this manner before any other court in the country, let alone repeatedly do so. *See Matter of De Anda*, 17 I&N Dec. 54, 58-59 (BIA 1979) (concluding that an attorney's failure to appear twice before an Immigration Judge would result in contempt in any state or federal court and thus a 6-month suspension was appropriate). It should not be tolerated in Immigration Courts either. Immigration proceedings are serious and could result in banishment of an individual from the United States. Depending on the scenario, that banishment may be for life. Attorneys cannot be allowed to run roughshod over judges or court staff whenever things do not go their way. In the end, this Court concludes that disbarment is appropriate. No judge or court staff should have to endure Mr. Cane's abusive tone and language, and unwarranted and unfounded personal attacks, particularly when he was given every opportunity to correct his behavior.

The respondent's suggested sanction of counseling is woefully insufficient based on the repeated and abusive violations of the professional rules of conduct. This is particularly true when the respondent failed to show remorse or change his behavior, even though he was warned by Disciplinary Counsel about his conduct. Despite these warnings, the respondent continued to disregard the proper decorum and language that should be used before a tribunal. The sanction imposed ensures that the public is protected from the respondent's conduct. This Court is not confident that Mr. Cane' will change his behavior with a less severe sanction. To be sure, this sanction will certainly have an impact on the respondent and his livelihood, but his conduct demonstrates a total disregard of the rules, and the effect his conduct has on the court system and the adjudicative process. In the end, this Court does "not consider the nature of the lawyer's practice, the effect on the lawyer's livelihood, or the level of pain inflicted when determining the appropriate sanction." *In re Scholl*, 200 Ariz. 222, 224 (2001) (citing *In re Shannon*, 179 Ariz. 52, 71 (1994)).

Accordingly, the Court enters the following Orders:

IT IS HEREBY ORDERED that all factual allegations have been proven by clear and convincing evidence, including factual allegations 1, 2, 5, 7, 10, 11, 12, 15, 17, 20, and 28;

IT IS FURTHER ORDERED that factual allegations 3 and 27 have not been proven by clear and convincing evidence;

IT IS FURTHER ORDERED that all of the allegations related to violations of the professional code of conduct in Counts 1-4 are **ADOPTED**;

IT IS FURTHER ORDERED that the respondent shall be disciplined for his violations of the professional code of conduct before the Immigration Courts, the Board of Immigration Appeals, and the Department of Homeland Security; and

IT IS FURTHER ORDERED that the respondent shall be disbarred from the practice of law and appearing before the Immigration Courts, the Board of Immigration Appeals, and the Department of Homeland Security.

MUNISH SHARDA
Digitally signed by MUNISH SHARDA
Date: 2022.03.18 09:09:17 -07'00'

Munish Sharda, Adjudicating Official
Immigration Judge

APPEAL RIGHTS: The government has the right to appeal the decision of the Adjudicating Official in this case. 8 C.F.R. § 1003.106(c). Any appeal by the government must be received by the Board of Immigration Appeals within thirty calendar days from the date of service of this decision. The respondent may not appeal this decision, but he may file a motion to set-aside pursuant to 8 C.F.R. § 1003.106(a)(3)(i)-(ii). Any such motion must be filed within 15 days of the issuance of this order. *Id.*

CERTIFICATE OF SERVICE

THIS DOCUMENT SERVED BY: MAIL (M) PERSONAL SERVICE (P)
TO: ( ) RESPONDENT ( ) RESPONDENT'S ATTORNEY ( ) DHS
DATE: ________________ BY COURT STAFF: ______________________