SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 13-073
District Docket No. VC-2011-0015E

IN THE MATTER OF	:
BENJAMIN C. WEINER	:
AN ATTORNEY AT LAW	:

Decision

Argued: October 17, 2013

Decided: November 21, 2013

Peter J. Gallagher appeared on behalf of the District VC Ethics Committee.

Respondent appeared pro se.

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

This matter was before us on a recommendation for discipline (reprimand), filed by the District VC Ethics Committee (DEC). The one-count complaint charged respondent with having violated RPC 8.2(a) (a lawyer shall not make a statement . . . with reckless disregard as to its truth or falsity

concerning the qualifications of a judge). We determine to impose a reprimand.

Respondent was admitted to the New Jersey bar in 1986. He has no prior discipline.

The facts contained in the complaint are largely undisputed. Respondent, however, denied that his actions violated the RPCs.

Respondent, president and legal counsel for Great Western Mineral and Mining Company, Inc. (GW), retained Pennsylvania counsel, James Wiley, to prosecute a legal malpractice claim against a law firm, Brownstein and Vitale, PC (BV), that had performed legal services for a predecessor company.[1] BV retained Thomas D. Paradise, of the law firm of Fox Rothschild, LLP, to defend it against the malpractice claim.

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[1] GW was the assignee of a claim originally brought by "Active Entertainment, Inc.", the losing party in litigation over the building of a miniature golf course (Great Western Mining & Mineral Co., Assignee of HRC/NJ, Inc., Assignee of Active Entertainment Inc. v. Fox Rothschild, LLP; Thomas D. Paradise, et al., 615 F.3d 159 (2010)).

In 2003, GW and BV voluntarily agreed to arbitrate the legal malpractice claim before Thomas Rutter, founder and CEO of ADR Options, Inc., an alternative dispute resolution company. Paradise and Fox Rothschild represented BV for the arbitration. Ultimately, Rutter ruled in favor of BV.

Thereafter, GW filed a petition in Pennsylvania state court to vacate the arbitration award, on the basis of an alleged conflict of interest that Rutter had failed to disclose, prior to arbitration. Both the petition to vacate the award and a subsequent motion for reconsideration were denied.

In September 2005, the Pennsylvania Superior Court affirmed the denial of the petition. In July 2006, the Pennsylvania Supreme Court denied GW's petition for leave to appeal.

Meanwhile, in June 2005, GW had filed a separate complaint, in the Pennsylvania Court of Common Pleas, against Rutter, ADR Options, Paradise, and Fox Rothschild alleging tort and breach of contract arising out of the same conflict of interest. That complaint was dismissed, in February 2006, on collateral estoppel grounds. Respondent and GW's subsequent attempts to appeal the dismissal were denied by the Pennsylvania Superior and Supreme Courts.

In February 2008, respondent, as attorney for plaintiff GW, filed yet another lawsuit, this time in the United States District Court for the District of New Jersey (USDNJ). The complaint named the following defendants: Rutter, ADR Options, Fox Rothschild, Paradise, and another member of that law firm, Robert S. Tintner, the grievant in this matter.

This disciplinary case has, at its core, a statement allegedly made by Tintner to GW's Pennsylvania counsel, Wiley. That statement, as related to respondent by Wiley, left a deep impression on respondent. According to respondent, when GW appealed its loss in the Pennsylvania state court litigation,

> Tintner was representing the Fox Rothschild Defendants but he was also co-counsel with ADR Defendants. And at times they all had contact together. When he found out about the appeal the next day he immediately called Wiley. He stated to Wiley, and I quote, there's no way that a Philadelphia court is ever going to find against Thomas Rutter given his relationship with the Philadelphia court system and the Pennsylvania court system because they're located all throughout. Tintner was irritated because Wiley just did not get it. Tintner did because he was part of the legal scene. He elaborated more. Wiley confined that to an affidavit and presented it to us.

> I asked him for it if we would ever need it if we ever decided to move forward with the case.
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> [T160-21 to T161-10.][2]

After GW's malpractice claim was lost in the Pennsylvania courts, respondent's initial USDNJ complaint alleged that the Pennsylvania state courts had violated GW's rights of due process. The initial complaint alleged the following:

> a) "[T]he hearings received (or did not receive) in Pennsylvania failed to satisfy due process in that the court decisions were predetermined prior to the beginning of the hearing. The judiciary was beholden to the authority and influence of certain Defendants. . . ." (Initial Complaint, ¶5,¶43.)
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> b) "The judiciary was beholden to the authority and influence of defendants ADR Options and Rutter." (Initial Complaint,¶45.)
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> c) "Defendants [sic] conduct was by commission or omission a utilization of the Pennsylvania Judiciary to further the interests of Defendants in violation of

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[2] "T" refers to the transcript of the February 13, 2013 DEC hearing.

> Plaintiff's constitutional and statutory rights." (Initial Complaint,¶48.)
>
> [C¶10][3]

In July 2008, the defendants moved for dismissal of the complaint. On March 16, 2009, the USDNJ dismissed the complaint.

Ten days later, on March 26, 2009, respondent filed motions for reconsideration and for leave to file an amended complaint. The proposed amended complaint contained similar, but more numerous allegations of corruption, as follows:

> a) "Plaintiff prays for relief in that the official acts of the Philadelphia and Pennsylvania judges that presided over its actions against defendants were predetermined, the product of a corrupt conspiracy, that induced the judges to act in a particular way." (Amended Complaint, ¶ 2.)
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> b) "The case worked its way through the Pennsylvania judicial system and was subject to decisions that were wrought with judicial errors at best or under the constraints of undue influence at worst." (Amended complaint, 11 { [sic] 19, 31.)
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> c) "The magnitude of these misapplications of law, their repetition, their failure to

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[3] "C" refers to the April 5, 2012 formal ethics complaint against respondent.

be even addressed by the courts on appeal (much less reversed) reflects [sic] an external undue influence, a predetermined decision[,] the product of a corrupt conspiracy. The courts [sic] opinions provided transparency for their opinions were at odds with their rulings." (Amended Complaint,¶39.)

d) "Plaintiff suspects that Defendants had other direct and/or indirect contacts with the judiciary influencing this matter ...."(Amended Complaint, [¶]49.)

e) "[Grievant's] statement reveals an understanding in place between the Defendants and the Philadelphia judicial system. An agreement between the Defendants and the Philadelphia judicial system [sic]. Their objective, to not allow Great Western's civil case to survive preliminary objections for Great Western could never be allowed to conduct discovery and uncover further damaging nondisclosures." (Amended Complaint, [¶]50.)

f) "[T]he hearings it received (or did not receive) in Pennsylvania failed to satisfy due process in that the court decisions were predetermined prior to the beginning of the hearing." (Amended Complaint, ¶73.)

g) "The judiciary was beholden to the authority and influence of defendants ADR Options and Rutter." (Amended Complaint, ¶75.)

h) "Following the filing of Great Western's petition to vacate the arbitrator's award in the Philadelphia Court of Common Pleas . . . through the Pennsylvania Supreme Court denial of its Allowance of Appeal . . . Defendants corruptly conspired with the

> courts to ensure the outcome." (Amended Complaint, ¶76.)
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> [C¶13,Ex.J-3.]

On June 24, 2009, the USDNJ denied GW's motions.

Respondent appealed the dismissal to the United States Third Circuit Court of Appeals. On August 5, 2010, that court issued an opinion affirming the dismissal. In a lengthy opinion, that court found, among other things, that

> [a]t most, Great Western has alleged that Pennsylvania state-court judges hoped to secure employment with ADR Options after leaving the bench and thus had an incentive to rule in the company's favor. Fatal to its claim, however, Great Western failed to make any factual contentions concerning conduct by Rutter or any of the other Defendants. Specifically, even Proposed Amended Complaint 3 is devoid of allegations that Rutter or any of the Defendants did or said something to the judges to create an understanding that favorable rulings could result in future employment. Instead, the allegations in the complaint, even when viewed in the light most favorable to Great Western, describe unilateral action on the part of certain judges.
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> . . .
>
> Furthermore, Great Western has not pleaded any facts that plausibly suggest a meeting of the minds between Rutter and members of the Pennsylvania judiciary [citations omitted].
>
> . . .
>
> Great Western's Proposed Amended Complaint 3 lacks sufficient factual allegations to create "plausible grounds to infer an

> agreement" [citation omitted]. Any effort to amend by substituting Proposed Amended Complaint 3 therefore was futile, and we inturn affirm the District Court's denial of leave to amend on that ground.
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> [Great Western, 615 F.3d, 178,179 (2010) (Ex.J-44).]

Respondent's petition to the United States Supreme Court for a writ of certiorari was likewise denied.

Respondent stipulated that he had made all of the statements set forth in the pleadings and motions filed in the federal court action.

At the DEC hearing, the parties agreed that, at the time of the GW litigation, there were approximately 250 judges in Pennsylvania, only ten of whom directly handled the GW matter.

Respondent was the sole witness to testify at the DEC hearing.[4] He was repeatedly asked for evidence that any of the ten judges actually involved in GW's underlying matters had been engaged in a "corrupt conspiracy" with Rutter or his company. Respondent offered no such evidence. Likewise, he was unable to

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[4] Respondent asked the DEC to subpoena the testimony of forty-five witnesses, including thirty-four active and retired Pennsylvania judges. The remaining persons were court and ADR Options personnel. His requests were denied.

offer evidence that any of the remaining 240 Pennsylvania judges who were never involved with the GW matters were involved in a corrupt conspiracy with Rutter or his company. Instead, respondent testified about his belief that Rutter, as head of ADR Options, which he characterized as the largest alternate dispute resolution company in Pennsylvania,

> poaches judges from the bench while they're still on the bench before they retire. Judges come to him for jobs while on the bench quid pro quo. And they have no intention of leaving the bench. And they were our judges that ruled against us. And you'll see that the New Jersey -- let me just state this is all relevant because this individual is caught up in something with the judges.
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> [PANEL CHAIR]: I want to make sure one word you used. Did you say approaches or poaches?
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> MR. WEINER: I said poaches.
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> [T113-12 to 23.]

Further, respondent included Rutter's alleged admission that he approached judges "when he feels it's a good asset for his company." A discussion followed:

> [PANEL MEMBER]: How does that relate to the 32 statements?
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> [PANEL CHAIR]: 30.

> MR. WEINER: Well, first, it was only 20 statements.
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> [PANEL MEMBER]: 20 statements. Pardon me.
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> MR. WEINER: The statements all state that the judiciary was indebted. That they had an incentive to rule for Rutter.
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> [T113-12 to T114-15.]

Respondent conceded that the statements impugned the integrity of the Pennsylvania judiciary. However, he argued that his actions did not violate RPC 8.2(a) because of his belief that the general corruption was real.

Respondent insisted that, had he been allowed to elicit the testimony of the forty-five witnesses he sought to call, he would have been able to establish "systemic," rather than individual, corruption:

> This case was never meant against a specific person or persons. It was much broader. It was systemic. So there was no play that I was trying to be cute and avoid the law. That would never cross my mind. If I had information on one specific judge it would be my duty to put it forward in the complaint to make the complaint viable.
> Let me state this. The basis for my compliant [sic], again, was [42 U.S.] 1983 and that it was not possible for Great Western Mining and Mineral Company. I was the attorney for them. And they were unable to receive a fair hearing in Pennsylvania against ADR Options and Thomas Rutter given Rutter's relationship with the Philadelphia

> court system. It was alleged in the legal complaint at the time that the Court decisions were predetermined, the judiciary was beholden to the authority and influence of defendants. Defendants were not the judges. They were the defendants that owned an arbitration firm that hired judges. The reason why it was not against the judiciary brought into the suit because of judicial immunity [sic]. And there was no basis of suing the judges individually.
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> [T29-18 to 30-14.]

Respondent offered other documents in support of his argument, but they did not bear on his USDNJ case, which contained all of the subject statements. They included: fourteen pages of ADR Options website documents; a twelve-page article, "Antitrust Law - Unnatural Parallelism;" an email from attorney Wiley, dated January 8, 2009; a five-page Los Angeles Times article, "Is Justice Served;" eleven pages of the Pennsylvania Code of Judicial Conduct; ADR Options' Interrogatory Answers; Philadelphia Civil Docket Reports for unrelated matters; a Philadelphia Inquirer article, "Penna.'s Legal System Nurtures Corruption;" a biography of Judge Justin Johnson; a biography of Rutter; a 1993 Philadelphia Inquirer article about Rutter; internet pages from Zoominfo.com, the University of California, and "the California Courts" regarding Lucie Baron, Erwin Chemerinsky, and J. Anthony Kline; a California Assembly bill

from 2002 regarding "Private Judging Companies;" an October 9, 2001 San Francisco Chronicle article, "Judges' Action Cast Shadow on Court's Integrity;" a February 23, 2007 Wall Street Journal article, "As Arbitration Booms, Will Judges Continue to Cash In;" and a February 20, 2007 article by United States Supreme Court Justice Anthony Kennedy, "Are Judges Abandoning the Bench?". None of these exhibits bore any connection to the GW matters.

Two additional articles dealt with Pennsylvania judges Michael Joyce and Orie Melvin. Both had been involved in respondent's Pennsylvania matters. However, the articles dealt with criminal convictions: Joyce for insurance fraud for feigning neck injuries, after an automobile accident, for which he collected $440,000 in insurance proceeds and Melvin for illegally using her taxpayer-funded staff to campaign for her seat on Pennsylvania's highest court. Neither of these articles bore any connection to GW's cases.

Respondent also offered several scholarly papers regarding the conduct of judges, a forty-two page deposition of Rutter, and two more from attorney Wiley. Those materials contained no information about corruption in GW's Pennsylvania matters.

Members of the DEC hearing panel repeatedly requested respondent to focus his testimony on evidence of actual corruption by Pennsylvania judges, as it pertained to his matters. The following exchange took place at the hearing below:

> [MR. WEINER]: And our [USDNJ] case was a fraud case against Rutter. It was a very serious charge. And if you were a judge that ruled against Rutter he was not the place you were going for retirement. You always had to think twice. And we – you'll see the evidence later. But my decisions, my statements were not made to specific judges. I didn't refer that this specific court the judge was wrong. I can't tell you for certainty it was this judge, this judge and this judge. I'm not certain of it. We do know that certain judges have come to him after ruling. After we lost the case and after the case was over for a short period of time judges then went to this guy. And was almost like a quid pro quo. They said I'm not leaving the bench, in so many words. But when I do leave the bench I'm coming to you for a job. That's highly unethical. It breaks judicial codes of conduct. There's a lot underlying this case.
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> [PANEL CHAIR]: Let me ask you one question.
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> MR. WEINER: Okay. But in this case here the judiciary in general, the 10 people we went in front some after we had the information, were just part of the judiciary. They were included by inference, just say.
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> [PANEL CHAIR]: Let me just ask one question and I think we'll conclude this argument.

Were any judges in Pennsylvania ever the subject of any disciplinary proceeding that you know of arising out of their handling of your cases?

MR. WEINER: Yes, it's absolutely incredible. While we have two of our judges that were on -- we had two Superior Court panels. Each panel was a three member panel. And they sit in Philadelphia and they rotate throughout the state. On one panel one of the members that I believe was the lead judge, he was indicted while this was going on.

[PANEL CHAIR]: Indicted for what?

MR. WEINER: For insurance fraud.

[PANEL CHAIR]: Okay. Let me rephrase my question because if he was indicted for beating his wife or indicted for insurance fraud that's not my question. My question is for the conduct that they displayed in the handling of your case, specific to your case, did any judge ever have a judicial conduct charge brought against them? And if so, what was the result of it?

MR. WEINER: No judicial conduct charge was brought against them. We did not file any motion, any claims in that I believed because the company Great Western had rights. And it was owed a substantial sum of money. We pursued it in the United States federal court.

[PANEL CHAIR]: Mr. Irwin.

[PANEL MEMBER]: Followup [sic] question to that. In New Jersey we have something called the A.C.J.C. which is the equivalent ethical system that disciplines judges for alleged

> infractions. Am I correct or incorrect that Pennsylvania has a similar system?
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> MR. WEINER: I'm not sure. I can't tell you specifically. I haven't practiced in Pennsylvania. We had an attorney representing us there. I practice in New Jersey.
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> [PANEL MEMBER]: Assume for the moment that Pennsylvania has a system disciplining its judges. Did you file any complaint before that Board or tribunal contesting the neutrality of any judge -- with any of these ten judges that sat on your case?
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> MR. WEINER: No.
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> [T36-15 to T39-6.]

Respondent also argued, both at the hearing and in his August 15, 2013 letter-brief to us, that the presenter had not proven a violation of RPC 8.2(a), which states as follows:

> A lawyer shall not make a false statement that the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications of a judge, adjudicatory officer or other public legal officer, or of a candidate for election or appointment to judicial or legal office.

According to respondent,

> [i]rrespective of whether the Hearing Panel did not believe the statements alleged by the respondent, the presenter did not attempt to present evidence that the statements were false and the Hearing Panel may not relieve the presenter of his burden of proof. The

threshold of falsity must be crossed. Without proof of falsity, respondent's statements are not sanctionable. As the presenter testified to before the Hearing Panel "Mr. Weiner's correct, that I'm not attempting to demonstrate that his statements were false." Hearing Panel Transcript, page 205, lines 8 - 10.

Let's discuss this a little further. "Attorneys who make statements impugning the integrity of a judge are ... entitled to ... First Amendment protection applicable in the defamation context. To begin with, attorneys may be sanctioned for impugning the integrity of a judge or the court only if their statements are false; truth is an absolute defense." *Standing Committee on Discipline of the U.S. District Court for the Central District of California v. Yagman,* 55 F.3d 1430, 1438 (9th Cir. 1995) citing *Garrison v. Louisiana,* 379 U.S. 64, 74 (1964). In a disciplinary proceeding, "[t]he disciplinary body bears the burden of proving falsity." *Yagman* at 1438, citing *Philadelphia Newspapers, Inc. v. Hepps,* 475 U.S. 767, 776-777 (1986). The presenter was briefed in advance of the hearing by the respondent on the above referenced cases on January 15, 2013.

[RB,2-3.][5]

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[5] "RB" refers to respondent's August 15, 2013 brief to us.

Worded differently, respondent argued that it is the presenter's burden to disprove respondent's myriad statements that virtually the entire Pennsylvania judiciary is corrupt:

> [I]n his investigative report dating back to March 21, 2012 the presenter cited to *Office of Disciplinary Counsel v. Surrick,* 561 Pa. 167, 172 749 A.2d 441,444 (2000), a Pennsylvania Supreme Court case which stated: "Disciplinary Counsel can meet this burden by presenting documentary evidence or testimony from the persons at whom the allegations were aimed that the statements are false." "The burden then shifts to respondent to establish that the allegations are true or that following a reasonable diligent inquiry, he had formed an objective reasonable belief that the allegations were true."
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> [RB,3-4.]

Respondent faulted the presenter for failing to question any of the roughly 250 judges that made up the Pennsylvania judiciary, in order to establish that respondent's statements about corruption were false, stating: "[T]he presenter knowingly decided not to use [the subpoena] process to obtain testimony or for that matter even a statement from any judge."

In stark contrast to respondent's arguments about falsity, the presenter argued, as follows, in his summation at the hearing below:

> And to be clear, the allegation here is that [respondent] made the statements with reckless disregard for their truth or falsity under Rule 8.2A by not doing any research or any investigation. Now, those are two words that Mr. Weiner used repeatedly over the last hour, but in reality, none of the research and none of the investigation had anything to do with any specific judges. There was no interviewing of the judges.
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> There was no interviewing of the staff. What you have is pulling together unrelated things. A San Francisco Chronicle article, an affidavit here, a statement there, none of which by themselves say anything about the specific judges or the entire Philadelphia judiciary being corrupt. And again, you can't aggregate all of that nothing together to make something. And that's what Mr. Weiner is trying to do here. There is ultimately not a scintilla of credible evidence. And it's so little, in fact, that, again, Judge Walls [the USDNJ judge] basically invited a Rule 11 motion which is not common from a judge. There is no evidence. There was no research. There was no investigation. There's nothing that demonstrates that Mr. Weiner undertook any investigation that would make the statements in his complaint anything other than made with reckless disregard for the truth.
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> [T202-21 to T203-21.]

The presenter further continued:

> You know, this case is about Mr. Weiner lost [sic] in an arbitration. He then appealed it and lost. Appealed that decision and lost. Brought another case based on the same thing and lost. And appealed that and lost again.

> In his mind I understand that he believes now that the only possible explanation for that is that all of these judges were corrupt and that all of these judges were in the pocket of Mr. Rutter, but there's no evidence of that. And there's no proof of that. When Mr. Weiner was asked specific questions, specific reference to any documents that showed that he had a basis to make these statements what you heard were things like you had to look at what Mr. Rutter didn't say and you had to read the tea leaves and you had to look at the character of the man. None of this justifies, none of this demonstrates any basis to make the sweeping statements that the entire Philadelphia judiciary, both judges who had something to do with his case and who didn't, are literally corrupt and beholden to ADR Options.
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> [T201-18 to T202-12.]

In finding that respondent violated RPC 8.2(a), the DEC came to several key conclusions. First, it found that respondent had provided no evidence that any of the ten judges who were involved in his Pennsylvania litigation were involved in a corrupt conspiracy against him. Likewise, respondent provided no evidence that any of the other 240 judges in Pennsylvania were involved in wrongdoing that pertained to him or GW.

The DEC concluded that, although respondent had not attributed specific misconduct in his Pennsylvania matter to any

named judges, he had made reckless statements pertaining to the ten judges involved in the Pennsylvania litigation, as well as blanket statements disparaging the qualifications of every other judge in Pennsylvania.

The DEC likened this case to In re Giannini, 212 N.J. 479 (2012), where the attorney violated RPC 8.2(a) for accusing a trial judge of being heavily biased against his client, due to a long-term friendship. The attorney also disparaged other judges by name and had complained, in a blanket statement, about the "corrupt judicial system in Camden County." Giannini received a censure.

The DEC also found In re Geller, 177 N.J. 505 (2003), to be "on point and very persuasive." There, the attorney displayed a failure to take responsibility for his wrongdoing. The DEC believed that respondent, too, lacked any contrition for his wrongdoing. Like Geller, respondent tried to re-litigate the underlying matters in the ethics proceedings, despite repeated warnings that he would not be permitted to do so, as evidenced by a series of DEC case-management orders.

In its hearing panel report, the DEC noted that respondent "went full speed ahead, and even proposed to subpoena 34 present and past members of the Pennsylvania judiciary in direct

contravention" of the multiple case management orders. When respondent took issue with that determination, he sought the disqualification of the panel chair.

The DEC summarized respondent's misconduct by quoting from Giannini, where it was found that the attorney had "never taken 'responsibility for his wrongdoing,' but instead [felt] entitled to unleash a 'myriad... of unprovoked, inflammatory, disparaging, and fictitious statements' when it suit[ed] his purposes."

In mitigation, the DEC took into account that respondent has no prior discipline, in over twenty-five years at the bar. The DEC also considered character affidavits from several people who attested to respondent's honesty and integrity.

Although the DEC did not specifically consider it as an aggravating factor, it noted that

> this matter required an inordinate amount of case management by the volunteers on Panel, due in no small measure to the conduct of Respondent whose accusations against the Panel's members and resistance to the process in general were uncalled for and

> unprofessional, and bordered on an independent ethics violation.
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> [HPR¶58.][6]

Upon a de novo review of the record, including post-hearing submissions by the parties and the oral argument before us, we are satisfied that the DEC's conclusion that respondent's conduct was unethical was fully supported by clear and convincing evidence.

The presenter made it clear, from the outset of the proceedings against respondent, that he would seek to prove only that aspect of RPC 8.2(a) prohibiting a lawyer from making a statement with reckless disregard as to its truth or falsity, concerning the qualifications of a judge.

In complaints drafted and amended solely by him, respondent made a series of statements asserting that ten Pennsylvania judges, who, over the years, handled the Pennsylvania litigation in which GW was involved, were corrupt and beholden to Rutter. Respondent also made blanket statements about the remaining 240 or so judges in Pennsylvania, as having been involved in a

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[6] "HPR" refers to the hearing panel report.

corrupt conspiracy as well, all of which, he accused, led to GW's loss of its malpractice case.

Respondent made several arguments, in an attempt to show that he had committed no wrongdoing, including such things as, the presenter had failed to prove that the twenty to thirty statements were false; respondent was entitled to make such statements under the free-speech guarantee of the First Amendment to the U.S. Constitution; statements that admittedly impugned the integrity of the judiciary did not question the qualifications of the judges; and he never sought to show that specific judges in Pennsylvania were corrupt, but to show "systemic" corruption.

First and foremost, we note that the presenter did not seek to prove respondent guilty of that part of RPC 8.2(a) dealing with an attorney's knowledge of the falsity of his or her statements. Rather, he sought to prove that part of the rule dealing with an attorney's reckless disregard for the truth or falsity of the statements. Second, respondent's statements did, in fact, go to the core qualifications of a judge – honesty and integrity. Third, the "systemic corruption" that respondent sought to show is relevant only if the evidence were to show

that a Pennsylvania judge was involved in corruption that affected GW's case.

Respondent produced a slew of documents, culled from periodicals, national newspapers, the internet and the like, to support his position. Yet, not one of those pieces of evidence had anything specifically to do with a wrong alleged to have been perpetrated upon GW.

Respondent did produce two articles dealing with the criminal convictions of two Pennsylvania judges who had actually been involved in the GW case. However, those convictions were for improper campaign fund use and insurance fraud, neither of which had any bearing on the GW litigation. Respondent conducted no meaningful investigation before drawing conclusions about corruption, rife across the Pennsylvania judiciary. He failed, through his underlying litigation, to interview, subpoena or otherwise take steps to establish that those two judges – or any Pennsylvania judge – were beholden to a corrupt scheme that had doomed his case to failure.

Instead, respondent resorted to disparaging, conclusory statements that the entire Pennsylvania judiciary was corrupt, rather than face the fact that he lost the Pennsylvania

litigation on the merits – or that Rutter had made the correct determination about the malpractice claim, from the very outset.

Respondent receives no credit for attempting to depose thirty-four Pennsylvania judges (and about eleven other witnesses) in the ethics proceeding. The DEC properly denied that request. We believe that it would have been fundamentally unfair to allow respondent to engage in a fishing expedition at that late juncture, where not one iota of evidence had been offered to support his assertions.

We give considerable weight to the fact that respondent's claims were scrutinized down to the last detail, in the USDNJ litigation, and that he lost at every turn, straight through to the U.S. Supreme Court. The Third Circuit Court of Appeals summed it up, when stating that GW had "failed to make any factual contentions concerning conduct by Rutter or any of the other Defendants."

Again, respondent has never once, since 2003, produced a single fact implicating anyone, judge or otherwise, in actual wrongdoing with respect to his Pennsylvania litigation. It is for this reason that we do not hesitate to find that his numerous, disparaging statements about the qualifications – the very honesty and integrity of the judges who considered his

Pennsylvania matter and others who comprise the Pennsylvania judiciary – were made with reckless disregard for their truth or falsity, a violation of RPC 8.2(a).

Attorneys who violate RPC 8.2(a) have received discipline ranging from a reprimand to a three-year suspension, depending on the severity and number of false or reckless statements involved, other found ethics violations, and the presence of aggravating factors, such as lack of remorse and prior discipline. See, e.g., In re Geller, supra, 177 N.J. 505 (reprimand for attorney who, in a deposition, referred to two judges as "corrupt," filed baseless motions accusing them of bias against him; failed to expedite litigation and to treat judges with courtesy, characterizing one judge's orders as "horseshit," labeling one of them "short, ugly and insecure," his adversary a "thief," the opposing party a "moron" who "lies like a rug," and regarding an unrelated litigant – the attorney asked the judge if he had ordered "that character who was in the courtroom this morning to see a psychologist"; the attorney also failed to comply with court orders (at times defiantly) and with the disciplinary special master's direction not to contact a judge; he used means intended to delay, embarrass or burden third parties; made serious charges of corruption against two

judges without any reasonable basis; made a discriminatory remark about a judge; and titled a certification filed with the court, "Fraud in Freehold"; in mitigation, the attorney's conduct occurred in the course of his own child-custody and visitation case, he had an unblemished twenty-two-year career, was held in high regard personally and professionally, was involved in legal and community activities, and taught business law; we noted in our decision that, were it not for the mitigating factors, we would have voted to suspend respondent (the next level of disciplinary sanction at the time)); In re Giannini, supra, 212 N.J. 479 (censure for attorney who, in a litigation matter, alleged that the trial court judge was "heavily biased" against his client because of a long-standing friendship with the adverse party; he raised those allegations again in subsequent Appellate Division filings, and alleged as a separate claim on appeal that, because the adverse party's attorney was married to a sitting member of the Appellate Division, additional bias existed against his client; the attorney also complained about the "corrupt judicial system in a reciprocal discipline matter, in Camden County"); In re Garcia, 194 N.J. 164 (2008) (in a reciprocal discipline matter, fifteen-month suspension for attorney who had made numerous false and

reckless allegations about the qualifications of judges, aided and abetted her husband in the practice of law after he was suspended, practiced under a false and misleading firm name, lacked candor to a tribunal, and filed several frivolous lawsuits); and In re Shearin, 172 N.J. 560 (2002) (three-year suspension, in a reciprocal discipline matter, for attorney who was suspended for three years in Delaware for knowingly disobeying the order of the Delaware Chancery Court, demonstrating a reckless disregard for the truth by making statements characterizing the mental health of the vice-chancellor of that court; the attorney also prosecuted a patently frivolous lawsuit and appeal over many months causing two federal courts, many judicial defendants and many other members of the legal system to waste time and resources on matters lacking in merit; the Supreme Court of Delaware cited the Delaware petition for discipline, which stated that the "Shearin suit" required the federal district court to review 200 pleadings and amendments on charges that had already been finally determined by the courts of the State of Delaware, a circumstance that underscored the seriousness of the attorney's ethics violations; prior one-year suspension (in an earlier reciprocal discipline matter) for misconduct in the same

chancery court matter, where she made false statements of material fact to the court; engaged in conduct intended to disrupt that tribunal; brought a non-meritorious claim; failed to disclose to a tribunal legal authority known to be directly adverse to the client's position and not disclosed by opposing counsel; and made a material false statement to a third party).

The suspension cases, Garcia and Shearin, involve much more serious and widespread misconduct and aggravating factors, such as prior discipline (Shearin), elements that are not present here.

For purposes of sanction, Geller (reprimand) and Giannini (censure) require closer scrutiny. In Giannini, the attacks on judges and others were more direct, more severe, and more unrelenting than this respondent's, for the following reasons. Giannini represented his sister, Phyllis, the defendant and immediate past president of a condominium association, in an action initiated by the incoming president, Davis, for Phyllis' failure to pay $7,250 of her own condominium association fees. Giannini's subsequent "scorched earth" attempts to undo the ensuing judgment ($10,250) against his sister "signaled the unleashing of a series of wholly unwarranted and fictitious attacks on numerous parties, some involved in the litigation

process and some who had nothing to do with it" (In re Giannini, DRB 11-328 (March 26, 2012) (slip op. at 24-25).

With no factual basis, Giannini attacked the integrity of the trial judge, after she issued a strongly worded opinion critical of him, accusing her of harboring a "heavy bias" in favor of his adversary. Then, in his appeal, Giannini accused Davis of perjury and lying at trial. He also accused the judge of intentionally misrepresenting the testimony of witnesses in the underlying trial, also an unfounded accusation (Id. at 25-26). Giannini claimed that Davis, a Camden County employee, had "exploited her public trust for private gain of over $10,250 [the judgment amount] for which she is a beneficiary" (Ibid.) He contended that Davis had "unclean hands in refusing to provide an alternative to litigation" and had sought "to exploit her special position" in Camden County, due to an alleged "long-standing intimate relationship with the Camden County presiding judge and desire to ensure the "princess status" that she allegedly enjoyed there (Id. at 10).

Giannini also accused the Camden County judiciary of "a clandestine fix" (Id. at 26), without any evidence to support the allegations. Giannini further claimed that his adversary and adversary's wife (an Appellate Division judge with no nexus to

the matter), improperly "profited" from the litigation and that his adversary "stood in the shadow of his wife's robe" (Id. at 16).

In addition to RPC 8.2(a), Giannini was found guilty of infractions not present here: RPC 3.1, RPC 3.4(d), RPC 3.4 (e), and RPC 8.4(d).

In Geller (reprimand), with no factual support, the attorney made accusations of corruption against judges and demeaned them on the basis of their ethnicity. Geller, too, was found guilty of several violations not present here: RPC 3.1, RPC 3.2, RPC 3.4(c), RPC 3.4(e), RPC 4.4, RPC 8.4(d), and RPC 8.4(g). We commented that we would have meted out a suspension, the next available sanction at the time, were it not for mitigation, including the fact that Geller's misconduct took place in a battle with his soon to be ex-wife, over child-custody and visitation rights.

In this case, respondent made twenty disparaging statements, but his infractions were not as widespread as in both Geller, where the misconduct, viewed without mitigation, would have warranted discipline higher than a reprimand, and Giannini, where the attorney received discipline one degree higher than a reprimand.

Based on the precedent in Geller and Giannini, and the mitigating factor that respondent has had no other brushes with the disciplinary system in twenty-seven years at the bar, we determine that a reprimand sufficiently addresses his misconduct.

Member Gallipoli recused himself. Member Zmirich did not participate.

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

Disciplinary Review Board
Bonnie C. Frost, Chair

By: Isabel Frank
Isabel Frank
Acting Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Benjamin C. Weiner
Docket No. DRB 13-073

Argued: October 17, 2013

Decided: November 21, 2013

Disposition: Reprimand

Members	Disbar	Suspension	Reprimand	Dismiss	Disqualified	Did not participate
Frost			X			
Baugh			X			
Clark			X			
Doremus			X			
Gallipoli					X	
Yamner			X			
Zmirich						X
Total:			5		1	1

Isabel Frank
Acting Chief Counsel