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SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 99-438

IN THE MATTER OF

BRUCE H. NAGEL

AN ATTORNEY AT LAW

Decision

Argued: February 3, 2000

Decided: May 10, 2000

Brian D. Gillet appeared on behalf of the Office of Attorney Ethics.

Michael Chertoff appeared on behalf of respondent.

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

This matter was before us based on a disciplinary stipulation between respondent and the Office of Attorney Ethics ("OAE"). Respondent was admitted to the New Jersey bar in 1977 and maintains an office for the practice of law in Livingston, Essex County. Respondent has no prior ethics history.

In or about 1990 respondent represented American Urgy Medical Center, Inc.

("Urgy") and Steven Becker, M.D. in several litigation matters. Those matters were consolidated and a single jury trial was held. The formal ethics complaint alleged that respondent violated RPC 3.2(failure to expedite litigation), RPC 3.4(c) (failure to obey an obligation under the rules of a tribunal) and RPC 8.4(d) (conduct prejudicial to the administration of justice) for his behavior during the trial.

The stipulated facts are as follows:

On August 6, 1992 the trial judge wrote to the OAE concerning respondent's behavior during the trial. In a second letter to the OAE, the judge recounted the events of the trial as follows:

> On the day this 22-day trial began, Mr. Nagel virtually had no proofs to substantiate any claims for damages beyond payment for debts incurred to banks during the time the partnership may have existed. . . . [W]itnesses were not timely brought in by Mr. Nagel, causing the litigation to be delayed. There was absolutely no courtesy or consideration displayed for anyone, and most particularly not for the system. Mr. Nagel repeatedly used personal references as to each pro se's credibility and culpability - - was repeatedly told by the Court to desist, and insisted on continuing, most particularly in front of the jury. Continuously throughout the proceeding, Mr. Nagel displayed inappropriate facial gestures and body gestures, interposed his whole person between the jury and each pro se while each questioned witnesses. Mr. Nagel

refused on many occasions to cooperate in placing identified and marked items on the counsel's table so that they could be utilized during the trial by the pro ses. In front of the jury and/or in ear shot of them and in chambers, during the trial and during the Charge instead of making objections, Mr. Nagel made the following statements to the court:

(1) You're wrong,

(2) You do not know what you are talking about,

(3) You're not correct,

(4) You do not know anything about partnerships,

(5) Had his client read from documents that had been explicitedly [sic] excluded from evidence,

(6) "You're treating me differently from them" [sic] (This tantrum occurred repeatedly. Whenever a ruling was made as to direct testimony, he would correlate it with instances permitted to the pro ses on cross-examination.)

[Exhibit 2]

The judge stated that respondent "insisted on creating explosively emotional situations everyday" and accused the judge of being unable to control the courtroom. In addition, according to the judge, respondent interrupted the judge numerous times during the jury charge and during the reading of the verdict.

Portions of the trial transcript of November 4, 1992, the day of the charge to the jury,

were made a part of the record in the ethics matter. Respondent's repeated interruptions are readily apparent. For example, as the judge explained the details of a pivotal partnership agreement to the jury, the following exchange took place:

THE COURT:	Mr. Nagel doesn't realize that his final statement has been completed and he is not permitted to address the jury again, ladies and Gentlemen.
MR. NAGEL:	I'm not addressing the jury, I'm addressing your Honor. There's an error that you made.
THE COURT:	Have a seat.
MR. NAGEL:	Please read the agreement.
THE COURT:	Have a seat. Your job, as I told you, will be to read the agreement which has sections on certain of the aspects of the arrangement between them and the partnership statute will control where there is no such arrangement between them. Now, there are also certain aspects of this – the closing statements that I want to straighten out for you. On this record there is no indication that anybody used anybody else's money by way of conversion. In other words, there's no indication that any funds due to Becker ever were cashed in by Lipsky or Zeltser and certainly there was no indication that in either of the – their banks.
MR. NAGEL:	Judge, that is absolutely insane Judge.
MR. ZELTSER:	Oh god.
MR. NAGEL:	I have to approach on this record. What about the checks?
MR. ZELTSER:	Your Honor – no, it's never been –
MR. NAGEL:	Your Honor can't make that determination.
THE COURT:	Mr. Nagel, would you care to leave the room while I give this --
MR. NAGEL:	I care to approach.
THE COURT:	Not right now.
MR. NAGEL:	Your Honor never told us that you were going to say –
THE COURT:	Sit down.
MR. NAGEL:	– on this record.
THE COURT:	Sit down.
MR. NAGEL:	What about those checks?
THE COURT:	Sit down.

Finally, according to the court, respondent's behavior reached its nadir:

> [Respondent's] behavior became more outrageous when the Court explained at length why it probably would be compelled to set aside a verdict in his client's favor if the jury was not able (because of [respondent's] antics) to understand which was permissible evidence and which was not. After this Mr. Nagel began a series of screaming, alleging assault by one pro se, slamming doors, slamming his fist repeatedly on the desk. [sic] His irrationality became a bit frightening to observe.
> The hubris, pugnacity and unabashed disrespect for the integrity of the judicial system exhibited by Mr. Nagel goes beyond anything this Court has ever witnessed or read about in relation to an attorney flouting the system, flagrant disregard for Rules of Evidence as well as clear Orders of the Court.
> [Exhibit 2]

Thereafter, on December 16, 1992 the trial judge issued an order to show cause under the summary contempt provisions of R.1:10-1 for respondent's "contempt of Court in that he failed to obey the Court's Order enunciated at sidebar on October 21, 1992 and each day of trial thereafter through November 2, 1992." Exhibit 3. It is unclear why the judge waited so long to invoke the summary contempt proceedings under R. 1:10-1, which was designed to be implemented close on the heels of the contemptuous conduct. On January 7, 1993 the judge found respondent in contempt of court and imposed a fine of $6,000.

On February 9, 1993 respondent appealed the contempt order and the trial judge's determination to vacate the $1,400,000 jury verdict in favor of respondent's client. The Appellate Division vacated the contempt conviction and remanded the matter to another judge, on the basis that respondent was never on notice of the specific contemptuous conduct. In addition, according to the Appellate Division, the judge had waited too long to

proceed under the summary contempt proceedings of R. 1:10-1. The Appellate Division disapproved of respondent's behavior in the underlying trial, itemizing some of respondent's worst behavior. Discussing the trial court's failure to make a finding of contempt during the trial, the Appellate Division wrote the following:

> Perhaps in this case the trial judge felt that a contemporaneous contempt charge would exacerbate the problems that everyone involved in this case was experiencing. Unfortunately, in retrospect the person reviewing the transcripts of this trial which covered twenty separate days discovers that Nagel seemed to become bolder and more openly contemptuous not only of the trial judge but also of the pro se defendants as the trial progressed. We note, moreover, there were many instances in which one or both of the pro se defendants did nothing to calm the troubled waters.
>
> [Exhibit 6 at 31].

The Appellate Division labeled respondent's misconduct as "contemptuous," "sarcastic," "accusatory" and "incredible."

As a result of the Appellate Division decision, the trial court vacated its January 7, 1993 contempt order and again referred the matter to the OAE. It is unclear from the record whether on remand respondent was again found in contempt of court by a second judge for his conduct in the matter – only that the trial judge determined not to pursue the contempt charge after the Appellate Division's remand. In either event, the acquittal of an attorney after trial on criminal charges is not res judicata in a subsequent disciplinary proceeding based on the same conduct. In re Rigolosi, 107 N.J. 192, 206 (1987).

* * *

Upon a de novo review of the record, we were satisfied that the DEC's conclusion that respondent was guilty of unethical conduct is supported by clear and convincing evidence.

Respondent admitted all of the above facts in the stipulation. However, he denied that he had violated any Rules of Professional Conduct. Respondent contended that he had reacted to "the cumulative effect" that the two pro se defendants had upon him.

In spite of respondent's contentions, a review of the record in this case yields the inevitable conclusion that his conduct toward the judge was contemptuous. Portions of the transcript of trial, particularly those of November 4, 1992, (Exhibits 9 through 14) showed instances of respondent's numerous outbursts during the judge's charge to the jury. Respondent went so far as to characterize the judge's jury charge as "absolutely insane," doing so in the presence of the jury. Moreover, respondent went out of his way to disrupt the trial, only to proclaim to the judge and jury that the judge could not control her courtroom and had allowed it to become "a circus."

There could be no credible defense or justification for respondent's outrageous behavior during the trial. The Appellate Division correctly characterized his behavior as "contemptuous, sarcastic, accusatory and incredible." Respondent's failure to conduct himself in a professional manner was a clear violation of RPC 3.4(c) and was prejudicial to the administration of justice, in violation of RPC 8.4(d).

With regard to the allegation of a violation of RPC 3.2, the record concentrated on the contempt issue. There is little evidence of a failure to expedite litigation. There is certainly not clear and convincing evidence of a violation of the rule. Therefore, we determined to dismiss the charge.

In its letter brief to the Board dated December 17, 1999, the OAE recommended a reprimand for respondent's misconduct.

In the past, misconduct similar to that displayed by respondent has been met with discipline ranging from a private reprimand (now an admonition) to a term of suspension.

In a 1992 matter an attorney received a private reprimand (now an admonition) for improper conduct during the course of litigation, while acting as counsel for one of the parties. Specifically, the attorney wrote a letter to the court containing inflammatory language and referred to his adversary as a "low life pretending to be a lawyer (who) apparently has caught the ear of this court and I am thoroughly disgusted." In imposing only a private reprimand, the Board considered that no prior disciplinary infractions had been sustained against the attorney in his twenty years at the bar. However, the instant case is more serious, in that respondent's misconduct was directed at a judge and, in addition, took place in open court and in front of the jury.

More severe discipline was imposed in In re Mezzacca, 67 N.J. 387 (1975), where the attorney was publicly reprimanded for referring to a departmental review committee as a "kangaroo court" and for making other discourteous comments. The attorney had no

previous discipline and apparently became personally involved in his client's cause. A public reprimand also resulted in In re Stanley, 102 N.J. 244 (1986), where the attorney engaged in shouting and other discourteous behavior toward the court in three separate cases. In mitigation, it was considered that the attorney was retired from the practice of law at the time of discipline, had no history of ethics infractions and did not injure any party by his misconduct. A public reprimand was also imposed in In re McAlevy, 69 N.J. 349 (1976), where the attorney physically attacked opposing counsel in chambers. In mitigation, it was noted that he had no disciplinary record and expressed regret for his actions. (The attorney would later receive a three-month suspension for discourteous conduct toward a judge and an adversary. In re McAlevy, 94 N.J. 201 (1983)).

The Court has also imposed a period of suspension for similar, but more serious, conduct. In re Vincenti, 92 N.J. 591 (1983), resulted in an attorney's one-year suspension for twenty-three counts of verbal abuse of judges, lawyers, witnesses and sixteen bystanders. The Court noted that Vincenti's misconduct was not an isolated example of loss of composure brought on by the emotion of the moment, but an attempt "to intimidate, threaten and bully those whose interests did not coincide with his own or his clients." Id. at 602. Two years later, Vincenti engaged in similar misconduct, for which he received a three-month suspension. In re Vincenti, 114 N.J. 275 (1989). See also In re Grenell, 127 N.J. 116 (1992), where a two-year suspension was imposed for outrageous conduct before several tribunals, including the disciplinary authorities.

The number and frequency of respondent's outbursts and the fact that they occurred in the presence of the jury after numerous warnings from the judge dictate discipline stronger than an admonition. We considered respondent's otherwise unblemished twenty-year career in mitigation. In addition, respondent's misconduct, which was limited to one admittedly highly emotionally charged case, was not severe enough to warrant the imposition of a term of suspension. Therefore, we unanimously determined to impose a reprimand.

We also required respondent to reimburse the Disciplinary Oversight Committee for administrative expenses.

Dated: 5/10/00

LEE M. HYMERLING
Chair
Disciplinary Review Board

SUPREME COURT OF NEW JERSEY

DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Bruce H. Nagel
Docket No. DRB 99-438

Argued: February 3, 2000

Decided: May 10, 2000

Disposition: Reprimand

Members	Disbar	Suspension	Reprimand	Admonition	Dismiss	Disqualified	Did not Participate
Hymerling			x				
Boylan			x				
Brody			x				
Lolla							x
Maudsley							x
Peterson			x				
Schwartz							x
Wissinger			x				
Total:			5				3

Robyn M. Hill 5/24/00
Robyn M. Hill
Chief Counsel