SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
DOCKET NO. DRB 99-415

IN THE MATTER OF

JOEL SOLOW

AN ATTORNEY AT LAW

Decision

Argued: February 3, 2000

Decided: October 18, 2000

Walton W. Kingsbery, III appeared on behalf of the Office of Attorney Ethics.

Waldron Kraemer 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 recommendation for discipline filed by the District VA Ethics Committee (DEC), stemming from respondent's handling of a number of social security disability hearings before two administrative law judges ("ALJ"). Four counts of the complaint charged that respondent made statements intended to disrupt the tribunal, in violation of RPC 3.5(c), and engaged in conduct prejudicial to the administration of justice, in violation of RPC 8.4(d). The fifth and final count of the complaint charged

respondent with misconduct arising out of a series of motions he made in matters before one of the two ALJs, in violation of RPC 8.2(a) (false statement about the qualifications of a judge), RPC 8.4(d) and RPC 8.4(g) (conduct involving discrimination). Pursuant to a pre-hearing conference order, the complaint was amended to charge respondent with a violation of RPC 3.2 (failure to expedite litigation and failure to treat with courtesy and consideration all those involved in the litigation process). Pursuant to the same order, the fifth count of the complaint was modified to stipulate that a motion to disqualify a Social Security Administration ALJ from hearing a disability case because the ALJ is blind was not, in and of itself, an ethics violation. The allegation was, therefore, limited to whether respondent made the motions to embarrass, antagonize or intimidate the ALJ, rather than to advance the interests of his clients.

Respondent was admitted to the New Jersey bar in 1974. Since 1981, he has been associated with the firm of Freeman and Bass in Newark, Essex County.

In 1994, respondent received a letter of admonition for possession of more than fifty grams of marijuana for personal use, in violation of N.J.S.A. 2C:35-10a(3). Respondent was granted a conditional discharge. In the Matter of Joel M. Solow, Docket No. DRB 94-327 (October 13, 1994).

Count One - The L.A. Hearing[1]

On May 14, 1997, respondent appeared before ALJ Richard L. DeSteno in behalf of L.A. At the beginning of the proceeding, Judge DeSteno asked respondent if he would be "interested at all in amending the alleged onset date" of L.A.'s claim to conform to previously submitted evidence. Respondent thought that the judge was asking him "to concede approximately 50% of the case." After further discussion, respondent moved to have Judge DeSteno recuse himself because he had "prejudged the matter." Judge DeSteno denied respondent's motion and instructed him to proceed with his opening statement. Despite repeated directions to stop, respondent raised his voice and continued to argue for Judge DeSteno's recusal. Judge DeSteno ultimately closed the hearing without further testimony.

The exchange that took place between Judge DeSteno and respondent is as follows:

DE STENO: Mr. Solow please state your appearance.

SOLOW: My name is Joel J-O-E-L Solow S-O-L-O-W.

DE STENO: Representing the claimant. This a [sic] claim for Disability Insurance Benefits and Supplemental Security Income. We are here on a remand from the appeals counsel. Several consultative examinations were obtained. We have present a vocational expert and my initial question to you Mr. Solow is, I've reviewed what you submitted to the appeals counsel, I've reviewed the consultative examinations, are you interested at all in amending the alleged onset date to February 1, 1995?

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[1]Social security benefits hearings are confidential. There is a protective order in place to protect the identities of the claimants.

SOLOW: Why would I wanna do that?

DE STENO: To conform to the evidence submitted to the appeals counsel and the sub...subsequent, ah...consultative examinations which establish some impairments with respect to respiratory and, ah...intelligence and literacy.

SOLOW: If Your Honor wants to have an off the record discussion about negotiating an onset...(inaudible)...I don't think that's an appropriate subject to discuss...

DE STENO: No, I wouldn't...

SOLOW: ...on the record...

DE STENO: No, it's not negotiations, I'm just asking you if you...if you wanted to amend the alleged on set date.

SOLOW: I have no idea why Your Honor would make a su...(inaudible).

DE STENO: I would be...I would at, ah...base...what I am telling you is based on the evidence I see here. I find, I would think that, it seems to me that a, ah...um...limited range of light work is supported as of February 1, 1995 which on the grid would place him as disabled.

SOLOW: Your Honor this man has been, ah...totally disabled since he stopped working.

DE STENO: Okay.

SOLOW: At this time...

DE STENO: So, the...the answer's no.

SOLOW: At this time...

DE STENO: That's fine.

SOLOW: ...I would, I'm compelled to make an, ah...ah...app...application that Your Honor recuse yourself from hearing this matter. There is a case called Rosa v. Palmer and that's a case where the ALJ had did what Your Honor just did. Had done what Your Honor just did. He had in the middle of the process made a suggestion that an onset date later than that alleged be agreed to by the claimant. Your Honor, this puts a certain pressure on the clamant and his counsel with regard to how Your Honor might react to our declining the suggestion of a settlement of the matter by way of amendment...

DE STENO: No settlement involved. I didn't suggest a settlement, I didn't suggest negotiations, I don't perceive settlement as, as proper it was a re...an inquiry as to whether you want to amend the alleged onset date. That's all.

SOLOW: It...it gives rise to the appearance that Your Honor has, at this point, prejudged the matter in a way that is not consistent with an open process.

DE STENO: Okay. Fine.

SOLOW: Ah...and...and we would ask that Your Honor disqualify and recuse yourself from hearing this matter.

DE STENO: Okay, that motion's denied, now let's go on. Do you have an opening statement?

SOLOW: I'm going to site the case...

DE STENO: You have one minute Mr. Solow now lets get on with the case. We're an hour late already.

SOLOW: I'm going to site the case of Miles v. Chater 84F3rd 1397, ah...which is an 11th circuit case in further support of our application that Your Honor recuse and disqualify yourself and particularly we will make reference to the comments that Your Honor had made at the bottom of page three of the decision that was issued...

DE STENO: That's been vacated...

SOLOW: (inaudible)

DE STENO: ...so there's no proper reference to a vacated decision.

SOLOW: The decision that was issued by Your Honor on July 11, 1995 starting at the page...at the last paragraph at the bottom of page three...

DE STENO: Ah..um...no, no, no, no, no, no, no. That's a vacated decision. Let's...

SOLOW: (inaudible)...go to...

DE STENO: We're past the remand req...its denied, I don't wanna hear anything else about the request for a deni, for a rec...for a recusal. Let's go on...

SOLOW: (inaudible)...your Honor...

DE STENO: Mist...Mr. Solow, I'm directing you to stop with the request for a recusal. It's denied. Nothing else is to be heard about that.

SOLOW: I am going to...

DE STENO: You can make it to the appeals counsel, I'll close this hearing. The...the hearing that you've been offered is not mandatory. You've been offered it, you've accepted the request to hear it. If you do not want this hearing, it's being offered to you. If you don't want the hearing on the terms that I'm di...I'm telling you we have to do it on, I'm going to close the record right now.

SOLOW: Your Honor I am compelled to make reference to the 14th Amendment to the United States Constitution.

DE STENO: Nothing else about the motion for recusal. Now we're going on, do you have an opening statement on the case itself?

SOLOW: The 14th Amendment of the United State [sic] Constitution...

DE STENO: One more chance. Do you have an opening statement on the case? Is this an opening statement on the case?

SOLOW: ...includes...

DE STENO: Mr. Solow answer my question. Is this an opening statement on the case?

SOLOW: I am making an application that Your Honor recuse...

DE STENO: That's denied.

SOLOW: (inaudible)

DE STENO: I'm closing st...I'm closing discussion on that. That's denied.

SOLOW: ...at page...

DE STENO: Alright the hearing's closed.
[Exhibit C-1]

At the ethics hearing, respondent conceded that he should not have pursued the recusal motion to the extent that he did.

Count Two - The O.K. Hearing

On May 22, 1997, respondent appeared before Judge Jane Polisar in behalf of O.K. During the proceeding, respondent asked O.K. how much weight she was able to lift.[2] O.K. replied, "Fifty pounds." Judge Polisar sought clarification of the reply, asking "Five-Oh?"

[2]The amount of weight that a claimant is able to lift is a very significant issue in a social security hearing.

Respondent then stated to O.K., "Be careful. This woman's going to take advantage of you."

In his defense, respondent testified that he had expected O.K. to offer a different answer and that O.K. was confused and "couldn't get it together to verbalize." Respondent testified that he was fearful that Judge Polisar, who, in his view, tends to rule against his clients, would use O.K.'s mistake against her.

Count Three - The F.C. Hearing

On June 18, 1997 respondent appeared before Judge Polisar for a hearing in behalf of F.C., who testified through a translator. During the hearing, Judge Polisar sought clarification of F.C.'s educational background. Respondent asked for an opportunity to conduct a direct examination of F.C. before Judge Polisar cross-examined him. Judge Polisar explained that her role was not that of a "cross-examiner," but of a judge. After a dispute arose about a translated word, respondent requested that Judge Polisar recuse herself because she was acting as a witness. Respondent also asked that Judge Polisar state, for the record, the extent of her knowledge of the Spanish language. The request was denied.

Respondent testified that Judge Polisar had heard F.C. say "secondary school," but that "in the heat of the trial, [he] didn't get that."

Later in the Social Security Administration proceeding, during respondent's examination of F.C., Judge Polisar told respondent that he did not have to go over areas that she had already covered. Respondent countered that Judge Polisar "had a prejudgment"

against F.C. and asked that she recuse herself.

During his closing remarks, respondent continued to reargue his motion for Judge Polisar's recusal and accused her of prejudice against people "born on foreign soil."[3]

SOLOW: Your honor, may I be heard while I have closing remarks?

POLISAR: Certainly.

SOLOW: Your honor, you must admit it was...it would be difficult for one to have perceived how this again, ah...was, ah...conducted without coming to the conclusion that there was a prejudgment against the claimant. If the Honor has, has obtained, ah...has entertained a prejudgment against the claimant, the right thing to do would be to recuse yourself, ah...disqualify yourself.

POLISAR: Mist...Mr. Solow, you know what, you're entitled to have a closing if you'd like. You may not repeat anything you've already said and you may not be insulting to this tribunal or to me specifically.

SOLOW: Well, it was clear...,

POLISAR: You've already made, you've made that remark...

SOLOW: ...it was clear...,

POLISAR: ...asking to, for a recusal and I've denied that motion.

SOLOW: ...it was clear in the questions that your honor asked without...

POLISAR: Mr. Solow...,

SOLOW: ...giving me the chance to ask any questions that there, there was no interest in this man's health.

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[3]During the hearing before Judge Polisar, respondent also stated to F.C., "I'm sorry, I know you don't want to be here [ ] but you're facing a hostile tribunal and I have to do what I can."

POLISAR: ...Mr. Solow, you've already made that remark. I, I find it offensive...

SOLOW: Well, I'm asking you please...,

POLISAR: ...and I don't want to hear again.

SOLOW: ...please, please in the interest of fairness and due process if your honor had a prejudgment against this claimant before this, the case started, disqualify yourself. Have it heard by someone that doesn't have a prejudgment...

POLISAR: Okay...,

SOLOW: ...because that's not the right way to go about this.

POLISAR: Mist...Mr. Solow, you've already made that motion and I've denied it. If you have...,

SOLOW: This man is fif...,

POLISAR: ...Mr. Solow, do you have anything new to say?

SOLOW: ...this man is fifty-seven-years-old. He has an industrial work history in the relevant period as set forth in the regulation. I know that there's a strong feeling in the body politic against individuals that were bor...born on foreign soil. I understand that, that's clear through the actions of the United States Congress and it's clear to the action of the electorate but this is a judicial process. Politics has no place in it. Any hostility that is held against people foreign born overseas should be out of this proceeding. It should not be considered. The fact is the man has a history of industrial work. The fact is he had a back problem ah...which had a surgical procedure in Peru. God only knows what they did in 1980 or so in Peru with regard to an operation on this man's back. Thereafter, he did heavy work in an environment filled with dust and fumes. The record shows he has some trouble breathing. He has trouble with his back. He has trouble bending. He has trouble lifting and he cannot be

> in that type of environment anymore. That's the fact. The law said, if a man cannot do his past work, the vocational factors would dictate in this case that he could not do any alternative work. That's the fact of the matter. I don't think hostility against people born overseas has any place whatsoever in this process. It's one thing for the United States Congress to say, we're not gonna pay S.S.I. benefits to foreigners that are not citizens. It's another thing for a judge to use that kind of thought process in a judicial proceeding where it's not authorized by statute. That's completely off the wall and that appears to be what's going on here. This man has an industrial work history. He can't do that work anymore. He paid his taxes and he's entitled to the minimal subsistance [sic] that is available to him because he can't do the work anymore and it's really that simple.
>
> [Exhibit C-13]

Judge Polisar testified about the effect respondent's outbursts had on her:

Well, to have somebody who is that close to you, screaming in your face for a good long time, when I – when I replayed the tape, when I was typing up the transcript of it, it's upsetting every time I hear it because it does bring back what he was doing, and he was just in my face screaming at me for what appears to be no particular reason. I mean, to accuse me of xenophobia, there was nothing in any of my questions that would suggest that I was. So he came in combative and just didn't let up the whole time.

A lot of people said I should have just closed the hearing early on. Perhaps that would have been the better way to go. I hoped that he would behave in a professional manner. He didn't.

Q. Did Mr. Solow's behavior affect your ability to properly conduct the hearing?

A. It was very disruptive. I hope I conducted an acceptable hearing. It certainly was difficult.

[T6/21/99 at 136-137]

Count Four - The M.A.J. Hearing

On June 26, 1997, respondent appeared before Judge DeSteno in behalf of M.A.J. At the start of the proceeding, respondent requested an adjournment because certain exhibits were out of order and because Judge DeSteno is blind.[4] Judge DeSteno assured respondent that the exhibits would be corrected. Respondent then demanded that the exhibits be organized before the hearing continued. When the judge did not accede to respondent's demand, respondent became agitated and argued with the judge to an intolerable limit:

SOLOW: Your Honor, I'm making the request at this point in time that this matter be adjourned until we, um... organization of the exhibit file is, is, ah...corrected. Um...I have to ask that You Honor, ah...adjourn the case because Your Honor is blind and cannot see. Because Your Honor is blind...

DE STENO: Now what's your problem with the exhibits Mr. Solow? Never mind whether or I'm blind or not, what's the problem with the exhibits?

SOLOW: They're not in the appropriate order.

DE STENO: What's the appropriate order? What's the problem with them?

SOLOW: For one thing the list of exhibits is in two separate places in this folder. There's number 17 through 26 that's stapled to the left side of the folder and then in the body of the exhibits itself are the other numbers of the list of exhibits.

DE STENO: Okay, that's complaint number one. What's complaint number two?

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[4]Respondent did not explain the correlation between the judge's disability and the problem with the exhibits.

SOLOW: Part of...apparently Dr. Mohit's report, specifically the residual functional assessment done by Dr. Mohit, which is dated January 3, 1994, is in this folder in between...

DE STENO: January 3, 1995 is what I have.

SOLOW: Well, Dr. Mohit...has a report that has a date of dictation of January 3, 1995 and February 2, 1995, but exhibits...it doesn't have a number now...the document which is a medical assessment of ability to do work-related functions which appears to me to be signed by Dr. Mohit. Now I may not be reading the signature right, but that's what the signature looks...

DE STENO: And where is that document now?

SOLOW: ...like to me. That is in between what's marked Exhibit 11 and Exhibit 14.

DE STENO: Oh...er...

SOLOW: That bears the date of January 3, 1994 on it and... that...

DE STENO: (inaudible)

SOLOW: ...would appear to be something that should be a part of Dr. Mohit's report in chief which is at Exhibit, ah...12.

DE STENO: Yeah, we'll make it a part of that report. What else?

SOLOW: I can't wait until after the hearing closes for the corrections to be made. As a part of this process the file needs to be reorganized before we either object or consent to the way the evidence is placed into the record or whether it's placed into the record at any time.

DE STENO: Alright...

SOLOW: I can't...

DE STENO: Uh, uh, uh, uh, uh, uh, uh. Hold on.

SOLOW: (inaudible)

DE STENO: Hold...Don't make a speech...

SOLOW: ..at some time...

DE STENO: ...don't make a speech, don't make a speech.

SOLOW: ...after the hearing. Part of...

DE STENO: I am making...

SOLOW: ...part of...

DE STENO: I am making the residual functional capacity assessment of Mist...of Dr. Mohit part of Exhibit 12, his report.

SOLOW: (Inaudible)...do it right now. I'm handing the file to the exhibit, to the hearing clerk so that she can do it right now.

DE STENO: She doesn't have to physically do it now, my direction is that it will be made part...part 12 of Mr. ah...it would be part of Exhibit 12 which is Dr. Mohit's report.

SOLOW: Judge, due process...

DE STENO: Stop.

SOLOW: ...requires a process on the record.

DE STENO: Stop screaming...

SOLOW: Due Process...

DE STENO Stop screaming...

SOLOW: Due Pro...

DE STENO: ...and stop yelling...

SOLOW: Due process...

DE STENO: I'll cut you off right now.

SOLOW: Due process does not allow for organization and entry into evidence...

DE STENO: Stop screaming...

SOLOW: ...into a record after...

DE STENO: Stop yelling...

SOLOW: ...the hearing is closed...

DE STENO: ...stop screaming and stop yelling...

SOLOW: Due process...

DE STENO: Either stop screaming and yelling or I'll end this hearing now because you're...

SOLOW: I want the...

DE STENO: ...out of control.

SOLOW: ...matter adjourned because the hearing record is not properly organized...

DE STENO: You re, your request is denied...

SOLOW: ...I want it adjourned.

DE STENO: ...your request is denied. Flatly denied...

SOLOW: Due process...

DE STENO: ...now go on to the next...

SOLOW: ...due process...

DE STENO: ...go on to the next point...

SOLOW: ...due process requires that...

DE STENO: One more warning.

SOLOW: ...that a...(inaudible)...be reviewed by counsel and by the Court before it's entry into the record.

DE STENO: Okay, what...

SOLOW: I'm making objections...

DE STENO: I overrule it.

SOLOW: ...about this record at this point...(inaudible)...

DE STENO: It's overruled.

SOLOW: Your Honor...(inaudible)...

DE STENO: It's overruled...

SOLOW: ...just can't...

DE STENO: ...it's overruled...

SOLOW: ...after the hearing...

DE STENO: ...it's overruled...

SOLOW: ...is closed...

DE STENO: Your objection is overruled.

SOLOW: ...after the testimony...(inaudible)...decide you're going to make the record...

DE STENO: Your objection is overruled.

SOLOW: ...on your own without me being involved...

DE STENO: Stop right now...

SOLOW: ...you can't do that... (Inaudible)...

DE STENO: You're out of control.

SOLOW: ...that's not consistent with due process.

DE STENO: You're conducting yourself like a maniac and you're out of control.

SOLOW: Does Your Honor have any idea about fundamental due process that er ah...evidence goes into the record, on the record, in the presence of the leteg...litigants in the presence...

DE STENO: Mist...

SOLOW: ...of counsel.

DE STENO: Mr. Solow...listen to me...

SOLOW: ...it doesn't get organized, after the hearing...

DE STENO: ...listen to me.

SOLOW: ...is closed and, and...

DE STENO: You are out of control...

SOLOW: ...(inaudible)...after the hearing is closed.
DE STENO: ...you are out of control...

SOLOW: You can't do it like that.

DE STENO: ...One more warning.

SOLOW: ..that's not due process...

DE STENO: Stop right now...

SOLOW: I am requesting...(inaudible)...

DE STENO: ...ten seconds to stop or I'll close this hearing.

SOLOW: ...I am requesting that the matter be adjourned...

DE STENO: Denied.

SOLOW: ...until the hearing ah...record...

DE STENO: Denied...

SOLOW: ...can be properly organized.

DE STENO: Denied, denied and you're out of control. And you're totally unprofessional, you're unethical and you're at the lowest rung of, ah...of practice of attorneys. You're about the lowest quality of performance I've ever seen, you're totally unprofessional, you should be ashamed of being an attorney, you're ab...absolutely in violation of, ah...New Jersey Rules of Professional Conduct by your disruption of this hearing and refusal to accept rulings and if you don't absolutely go on to the next point right now, I'll close this hearing and consider filing charges against you.

SOLOW: Your Honor, in the ah...matter in chief before Your Honor, I made a specific request that Dr. Pisarillo's report be obtained by the Social Security Administration for entry into the office of hearings and ah...appeals record before the tribunal made a decision. Dr. Picarillo's report was a part of the ah...prior administrative determination of this matter, initial and

reconsideration. It was done at a time before the onset was found, Your Honor flatly...

DE STENO: What's your complaint?

SOLOW ...refused to make any efforts whatsoever to obtain the evidence that Social Security...

DE STENO: Stop yelling...

SOLOW: ...had in its possession...

DE STENO: Stop screaming...

SOLOW: ...before the matter came...

DE STENO: ...or I'll close this hearing...

SOLOW: ...on before your Honor...

DE STENO: Stop yelling and screaming...

SOLOW: As a result of...

DE STENO: ...or I'll close this hearing.

SOLOW: ...as a result...(inaudible)...

DE STENO: Stop yelling and screaming or I'll close this hearing. How dare you talk to me like that.

SOLOW: ...as a result of inad, inadmin, administrative inefficiency, incompetence, ineptitude...

DE STENO: The hearing is closed.

SOLOW: ...your Honor ran roughshod...

DE STENO: Close this hearing.

SOLOW: ...(inaudible)..at the first hearing...

WALKER: The hearing...(inaudible)...

SOLOW: ...we are requesting...

WALKER: ...in the case of M.J....

SOLOW: ...that it be adjourned so that the record can be properly organized.

WALKER: ...(Inaudible)...is ended June 26, 1997, 9:47 a.m.
[Exhibit C-3]

Respondent testified that the reason he kept insisting that the exhibits be organized forthwith was that he did not trust Judge DeSteno and thought that the judge might have been lying.

Judge DeSteno testified about his personal reaction to respondent's conduct and about the effect it had on M.J.'s case:

> . . . But you must understand, in a small – relatively small room, with a person maybe 10 feet away from you, screaming at the top of his lungs at you like that, I really wondered if in the next few minutes he'd come up and come around and just do something unbelievable. It was truly a violent tone of voice, a very strong attempt to intimidate, as I felt at the time, and to – and to, you know, make me do his bidding.
>
> Fortunately, I'm not easily intimidated. But it was – it was disturbing. It was disturbing. You probably could tell in my voice to some extent at the end. But I absolutely could not let that happen. I'd certainly be violating my obligations.
>
> Q. How did you feel by the end of that exchange?
>
> A. I was very, very disturbed that an attorney would engage in this kind

of conduct. I was upset. You know, it's not a pleasant thing for somebody to be screaming at you like that, for no reason that you can imagine, and mixing in the blind issue – which I personally found resentful and merely a ploy to intimidate, not based on any good-faith objection to a blind person evaluating the case.

So the combination of injecting the blindness issue right at the beginning, which I felt was an attempt to intimidate and retaliate, mixed in with this follow-up of screaming and shouting and totally out of control – I don't know how many times I said, 'You know, this is the last time. I'm warning you. I'm warning you.' I just – I just felt, one more time, he'll stop. One more time, he'll stop. But just – there was no stopping him. I had to close the hearing. And I quickly got out of the room.

Q. These hearings, do you know whether Mr. Solow has appealed these hearings?

A. We are not informed of appeals, so I do not know.

Q. What effect did Mr. Solow's behavior have on the progress of this hearing, this hearing with Ms. M.A.J.?

A. It deprived her of testifying; it deprived me of getting any benefit of any information that might have been adduced at the hearing that was not previously known, and it deprived me of hearing whatever oral argument Mr. Solow may have made which revealed issues and points that I felt were valuable. And, you know, it certainly seemed to me to breach the fiduciary duty an attorney has to a client.

[T6/21/99 at 42-44]

There is a reference in the ethics hearing record that Judges DeSteno and Polisar did not have the power to hold an attorney in contempt for inappropriate behavior.

* * *

Respondent offered a number of excuses by way of explanation and/or mitigation for his behavior in the four instances described above. Specifically, he contended that social security disability claim determinations are highly subjective and that, in his view, among all other ALJs, Judges DeSteno and Polisar are more likely to deny benefits to claimants.[5]

Respondent maintained that he was frustrated by his clients' inability to secure proper medical care and documentation of their conditions, making it difficult to prove their cases. Respondent also complained about what he perceives to be an automatic discounting of expert reports offered by his law firm. Furthermore, respondent contended that his clients are discriminated against, in the processing of their claims, based on their race and ethnicity.

Respondent contended that Judges DeSteno and Polisar complained to the ethics authorities in retaliation for respondent's complaints about a third ALJ. The DEC found this claim unsubstantiated, based on respondent's repeated acts of misconduct before the ALJs.

Respondent's next argument was that his conduct should not be judged in the context of an ordinary trial but, rather, in the context of a proceeding where the judge is also an

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[5]Prior to the ethics hearing, respondent sought to introduce statistical analysis to support his contentions. He also wanted to call as witnesses attorneys who were willing to testify about their experiences before Judge DeSteno. His request for the issuance of subpoenas was denied based on a finding that he had not met the requisite showing of good cause for the issuance of the subpoenas and that the proposed testimony and documentation were irrelevant. During the ethics hearing, respondent again sought to have the statistical analysis admitted. The hearing panel disallowed the statistical analysis, but permitted respondent to testify about his subjective beliefs, reasoning that they may be relevant to motivation and mitigation. Those statistics are not properly before us, but we agree that respondent's subjective beliefs are relevant to motivation and mitigation.

adversary. Throughout the record respondent asserted that an ALJ "wears three hats," meaning that the judge represents the claimant and the Social Security Administration and also acts as the independent decision-maker. The DEC acknowledged this widely-accepted metaphor and the proposition that an ALJ serves a function adverse or potentially adverse to the claimant, but concluded that respondent's view did not excuse his conduct toward ALJs DeSteno and Polisar.

Finally, respondent contended in his answer that his statements in behalf of his clients were constitutionally-protected speech.

Respondent conceded that he has "rough edges." Indeed, his counsel admitted that respondent's remarks were rude and inappropriate. Respondent testified that he is deeply committed to his clients and finds it emotionally distressing to listen to them describe their plights. Respondent added that, as a result of his work and the within matters, he began treatment with a psychiatrist. Respondent stated that, in the future, he will attempt to control his behavior, although he "can't make an absolute promise that [he] will never have any rough edges in the course of practice."

Count Five - The Motions for Recusal

During the course of hearings before Judge DeSteno in 1997 and 1998, respondent made motions for the judge's disqualification on the basis that he is blind and, therefore, unable to observe the claimant or review the documentary evidence. Initially, respondent

filed the motions in only certain cases. By early 1998, however, respondent began making these motions in every case. Judge DeSteno testified that, as of the DEC hearing, respondent had filed approximately one hundred such motions. The motion papers repeatedly referred to Judge DeSteno as "the blind judge." Respondent testified that his referral to Judge DeSteno in that way was an attempt to depersonalize the motion. The DEC "expressly reject[ed] the veracity of this testimony."

The record contains the transcript of six instances where respondent was appearing before Judge DeSteno and moved for his recusal. In each instance, respondent asked that Judge DeSteno place on the record the procedures he uses to review documentary evidence. One such exchange between respondent and Judge DeSteno is as follows:

> DE STENO: This is a claim for disability insurance benefits with an alleged onset date of February 28, 1997, correct?
>
> SOLOW: Your Honor, before we proceed any further we did make a motion that your Honor disqualify yourself in this matter and it appears that our motion with the supporting memo was marked in evidence 7B. There has been no determination...(inaudible)...that motion and I would request the opportunity to be heard with regard to same.
>
> DE STENO: You can be heard very briefly, Mr. Solow.
>
> SOLOW: Your Honor, I discussed this matter with the claimant and, um...I have explained to the claimant that your honor is blind and he would prefer that your Honor not decide this case, but ah...that some other individual decide the case. There are some, um...significant problems herein specifically there are extensive hand written notes that are in the evidence, there are charts and graphs that are in the evidence. It has never been explained how

your Honor reviews the hand written notes, the charts and graphs. Is there a reader here that reads the material to you [sic] honor? Is there a reader here that translates that material into braille? How does that reader decipher, ah...hand written notes and charts and graphs which are always...

DE STENO: Okay, bring it to a conclusion Mr. Solow.

SOLOW: ...which are always subject to some, ah...discrepancies. Two different individuals can read handwritten notes and question what the words say. Sometimes one individual says one thing and some..one individual says another thing. In this case, ah...the claimant has never been referred for an examination by a Social Security doctor of any kind, um ...we respectfully submit that it would inap...be inappropriate for a blind judge to hear this matter.

A visual observation of this manner...man makes it obvious that he's got significant medical problems and he's never ever been sent out by, eh...ah...Social Security for an examination of any kind whatsoever, and your Honor's not in a position to make any visual observation. We submit that it is important to the claimant that the...(inaudible)...and that's lacking.

DE STENO: That motion is denied. Anything else.

SOLOW: Your Honor, I would request that your Honor set forth on the record exactly how the written material is reviewed.

DE STENO: No, I have nothing to say about that.

SOLOW: (inaudible).

DE STENO: Anything on a different subject, Mr. Solow?

SOLOW: In light of the fact that Your Honor is blind I would request that the record, ah...make clear exactly what procedures, what...

DE STENO: I already denied that, you're pushing it again.

SOLOW: Can I ask...

DE STENO: Do you want your client to have a hearing today?

SOLOW: Can I ask why, your Honor?

DE STENO: I have nothing to say about it.

SOLOW: Can I ask why?

DE STENO: We...because we have to have a hearing now.

SOLOW: Due Process...

DE STENO: You have...you have a sick man here, he wants to have his benefits paid.

SOLOW: Due Process.

DE STENO: Your, your, ah...your ah...your [sic] rambling about nonsense.

SOLOW: I don't think this is nonsense.

DE STENO: Nonsense is complementing it, but, ah...I'll call it nonsense for now, I have a better word but I can't say it on the record. Anything else Mr. Solow on a different subject?

SOLOW: You...your Honor, we would submit that due process at a minimal would...would...

DE STENO: I'm not going to warn you again.

SOLOW: ...would make...

DE STENO: I'm going to close this hearing and your client won't have a hearing because this is the opportunity you've been given, you've been warned in writing and now you're breaking all of the rules I've set down and I'm not gonna sit here and, and argue with you. So your client is sitting here, he wants this hearing, you can deny him his hearing by keeping up with this

nonsense after I told you to stop. Your decision, I'm not gonna put up with it. So your name is M.G.?

M.G.: Yes, sir.

DE STENO: Have you expressed a desire to your, ah...attorney that I not hear this case?

M.G.: Yes.

DE STENO: Why?

M.G.: Because I, like he said I don't think you can fully evaluate this without reading the paper work.

DE STENO: Was that you [sic] idea or his?

M.G.: It was both a [sic] ours.

DE STENO: Both of y...who brought up the subject first?

SOLOW: Your Honor, there would be no way for the client to know that you were blind without me telling him.

DE STENO: That's not re...that's not...that's not the question, Mr. Solow.

SOLOW: I brought up the question first.
[Exhibit C-8]

In defense of his applications for Judge DeSteno's recusal because of the judge's disability, respondent pointed to a third circuit unpublished opinion in Brittle v.Comm'ner (Docket No. 98-6158) (December 30, 1998), which upheld the ALJ's finding that a claimant's subjective complaints were not entirely credible. The court noted that the ALJ "had the opportunity to see and hear [the claimant] and to evaluate her testimony in light of

the record made." Respondent relied on Brittle to demonstrate the need for him to make the recusal motions. Although respondent testified that he feels "very apologetic" to Judge DeSteno for the "turmoil" this has caused him, he stated that his duty is to his clients and that he had to make the motion in each case to preserve the record.[6]

* * *

The hearing panel report highlighted the issues arising from respondent's repeated recusal motions:

> . . . Notably, the OAE stipulates that the multiple motions to disqualify an ALJ because the ALJ is blind, by themselves, involve no ethical violation. The ethics charge is limited to whether, in making such motions, Respondent's purpose was not to advance the legitimate interests of his clients, but rather to embarrass, antagonize, discriminate against and/or intimidate Judge DeSteno. (See Pretrial Conference Order, ¶ 10). Respondent vehemently asserts that he makes the motions to disqualify, because he believes that a sight-impaired judge cannot properly consider difficult to decipher medical treatment records. He also believes that a sight-impaired judge cannot properly evaluate a case as he cannot evaluate the demeanor of a claimant or observe injuries or conditions, which may indicate an illness or disability. The issue, however, is not that the motions were made; rather, the problem is the manner in which they were made. This distinction seems to be lost on Respondent.
>
> We find that Respondent's conduct with regard to the motions to disqualify Judge DeSteno because he is blind was, in part, intended to embarrass and intimidate Judge DeSteno. The motion papers filed by

[6]Contrary to respondent's opinion, Judge DeSteno testified that, according to case law and the Social Security Administration rules and regulations, no weight is to be given to a claimant's appearance. The record does not resolve this discrepancy.

Respondent refer, over and over again , to Judge DeSteno as 'the blind judge.' This continued reference is unnecessary and offensive.

The recusal motion was filed in every case Respondent handled before Judge DeSteno and the motion papers, as they related to this issue, were substantially the same. Moreover, Respondent's oral argument at the OV, RE, IH, IP, GR and MG hearings was very similar. In neither the motion papers nor oral argument did Respondent address the issue as it related to specific circumstances of a particular claimant's case. Despite this, Respondent insisted on presenting oral argument at every hearing, rather than relying on his motion papers or previously presented oral argument.

[Hearing panel report at 14-15]

The DEC was clearly troubled by respondent's conduct before Judges Polisar and DeSteno. Before setting out its specific findings, the DEC stated the following:

We find that Respondent's conduct rises to ethical violations. His conduct was not merely a transgression of social niceties. Rather, his behavior was outrageous and unacceptable for that of a New Jersey attorney. We do not view the mandate of the subject RPCs to insure appropriate social interaction, nor do we view our objective to be to force courteous behavior. Instead, we find the purpose of the subject RPCs is, in part, to promote a minimal threshold of ethical conduct. Based upon these facts, we have no difficulty distinguishing between permissible vigorous advocacy by an attorney and an obvious ethical transgression.

This is a case in which Respondent is accused of a series of unethical conduct arising from his interaction with two ALJs at several Social Security Hearings. Respondent's conduct is not aberrant, nor isolated. We find that his conduct was motivated to intimidate the ALJs and was in an effort to retaliate against what he perceived as bias towards his clients, his firm, his experts and himself. We note with disappointment that Respondent did not represent that such conduct would not recur.

Respondent seems to wish to excuse his behavior as merely the result of his 'rough edges.' However, as noted earlier, the conduct in violation of the RPCs is more than the result of 'rough edges.' The conduct is intentional and is a misguided attempt to zealously represent his clients.

> The Respondent has presented several arguments in mitigation, which, while they do not vitiate the violation, serve to help us understand his motives. Respondent believes that the judges are biased and as a result, his clients are not successful before them. We find that he also believes Judge DeSteno's sight-impairedness prevents a proper evaluation of the case, which harms his clients. These beliefs, coupled with Respondent's unusual personal connection with the unfortunate plight of many of his clients, aids us in our understanding as to why he felt compelled to take this chosen course of action. We also find that his treatment with a psychiatrist is a mitigating factor.
>
> [Hearing panel report at 16-17]

The DEC concluded that respondent had violated RPC 3.2, RPC 3.5(c) and RPC 8.4(d), finding no clear and convincing evidence that respondent had violated RPC 8.2(a) and RPC 8.4(g). As to the measure of discipline, the DEC found that respondent's 1994 admonition had no connection to the within violations and, therefore, should not be considered as an aggravating factor. The DEC recommended the imposition of a reprimand.[7]

* * *

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

As to counts one through four, the DEC was correct in its assessment of respondent's conduct and in its determination that he violated RPC 3.2, RPC 3.5(c) and RPC 8.4(d).

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[7]The OAE's cover letter, forwarding this matter to us, indicated that office's disagreement with the DEC's failure to find a violation of RPC 8.4(g) and with the DEC's recommended level of discipline, which the OAE deemed inadequate in light of the findings made by the DEC.

Although a heated argument made in the name of zealous representation of a client at times is understandable and even excused, respondent's conduct went far beyond that level. It is the repetitive nature of his misconduct that makes it difficult to view his outbursts as passionate advocacy, rather then a conscious, disruptive course of action. Respondent's conduct not only delayed the progress of the hearings and wasted valuable judicial resources, but evidenced an utter disregard for the courtesy owed to a judge. Even accepting respondent's argument that the ALJs were also his adversaries, outrageous conduct toward an adversary should not be tolerated.[8] In addition, as noted above, respondent contended that his statements in behalf of his clients were constitutionally-protected speech. Respondent's argument misses the point. It is not the content of respondent's speech, but, rather, the discourteous and obnoxious manner in which he said it. Thus, this defense is without merit.

As to respondent's contention that the ALJs were biased against his clients, the proper forum for that argument is the appellate tribunal or a judicial review board. Although respondent's dedication to his clients and recognition of the financial difficulties they may face pending an appeal may be admirable, those sentiments serve only to mitigate his misconduct, not to excuse it.

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[8]After oral argument before us, respondent's counsel submitted a copy of a June 5, 2000 United States Supreme Court opinion, stating that "Social Security proceedings are inquisitorial rather than adversarial." Counsel argued that the opinion makes it clear that a social security ALJ performs an investigative function, rather than a judicial function. Counsel asked that we, therefore, assess respondent's conduct in the context in which it occurred. Counsel, however, best summed up our reply to this argument in his cover letter to us, in which he stated "[a] lawyer should not be rude to another lawyer." In our view, offensive conduct is offensive, whatever the venue.

As to the fifth count, the DEC's finding that respondent violated RPC 8.4(d) was appropriate. Setting aside any suspicions about respondent's underlying motives for filing the motions, as noted above he wasted valuable court resources by repeatedly arguing the same motion, knowing precisely what the outcome would be. If, as respondent contended, he had to preserve the record for appeal, his motion could have been made in a simpler, less offensive fashion. Furthermore, once respondent saw that his motions were consistently receiving the same ruling from Judge DeSteno, respondent should have taken other courses of action.[9] We also find that respondent's repeated use of the phrase "the blind judge" was appallingly insensitive. Like the DEC, we are not persuaded that respondent used that term to "depersonalize" the motion.

The DEC's determination that respondent did not violate RPC 8.2(a) (false statement about a judge's qualifications) was also sound. Respondent's motions (exhibit C-5), did not question Judge DeSteno's abilities as a judge but, rather, his physical ability to consider physical and documentary evidence before him.

We also confirm the DEC's conclusion that respondent did not violate RPC 8.4(g). That rule provides that it is professional misconduct to "engage . . . in conduct involving discrimination . . . because of . . . handicap, where the conduct is intended or likely to cause harm." Although respondent's actions were inappropriate and unruly and, indeed, violated

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[9]Respondent testified that he appealed the denial of his motion in "scores" of the cases and none had been decided as of the DEC hearing.

RPC 8.4(d), the record does not support a finding, to a clear and convincing standard, that respondent violated RPC 8.4(g). The conduct did not, nor was it likely to, cause harm to Judge DeSteno, the alleged victim of the alleged discrimination. Nor is there any evidence that respondent, through his overzealous advocacy, intended to cause harm to the judge. Absent this element, we cannot find a violation of RPC 8.4(g).

In the past, intimidating and contemptuous conduct has resulted in discipline ranging from a reprimand to a suspension. See, e.g., In re Hartman, 142 N.J. 587 (1995) (reprimand imposed where the attorney intentionally and repeatedly ignored court orders to pay opposing counsel a fee and who, in a separate case, engaged in discourteous and abusive conduct toward a judge in an attempt to intimidate the judge into hearing his client's matter that day); In re McAlevy, 94 N.J. 201 (1983) (three-month suspension for discourteous conduct toward a judge and an adversary. McAlevy had received a prior public reprimand for physically attacking opposing counsel. In re McAlevy, 69 N.J. 349 (1976); In re Vincenti, 92 N.J. 591 (1983) (one-year suspension, based on twenty-three counts of verbal attacks on judges, lawyers, witnesses and 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 client's"); and In re Grenell, 127 N.J. 116 (1992) (two-year suspension imposed for outrageous conduct before several tribunals, including the disciplinary authorities).

Respondent's conduct was more analogous to that of the attorney 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. Stanley received a public reprimand. In mitigation, it was considered that Stanley was retired from the practice of law at the time of the discipline, had no history of ethics infractions and did not injure any party by his conduct. As in Stanley, there were instances of disrespect to a tribunal in this case. Distinct from Stanley, however, are the number of instances in which this respondent made the motion for Judge DeSteno's recusal and, more importantly, the potential, if not actual, harm to respondent's clients. As noted above, one of the mitigating factors found in Stanley was the lack of harm to any client. Here, Judge DeSteno testified that, at least in the MAJ matter, the client was harmed by the closing of the hearing due to respondent's inappropriate conduct. These considerations notwithstanding, we are unable to conclude that this matter merits more severe discipline than that imposed in Stanley. We took into account not only respondent's obvious concern for his clients, but also the pressures of the area in which he practices law. Respondent is a passionate advocate for clients who need passionate advocacy. He must, however, quickly learn to police his behavior, to be mindful of the line he crossed and to be cautious not to cross it again.

In view of the foregoing, a four-member majority determined to reprimand respondent. One member dissented, voting for a three-month suspension. Three members did not participate.

One additional point warrants mention. Respondent's counsel stated that the Social Security Administration maintains procedures to discipline attorneys within the system. Therefore, he contended, the DEC and Board proceedings were preempted by that other system's jurisdiction.[10] Counsel's argument is without merit. The attorney disciplinary system is not preempted by another related disciplinary system. For example, an employee facing discipline in connection with his or her employment will still face the attorney disciplinary system, if that individual is an attorney. In re Hyderally, 162 N.J. 95 (1999) (reprimand imposed where an attorney had already been disciplined by the Judge Advocate General of the United States Navy). Furthermore, judges who are disciplined by the Advisory Committee on Judicial Conduct are still subject to attorney disciplinary proceedings. See In re Imbriani, 149 N.J. 521 (1997), In re Pepe, 140 N.J. 561 (1995) and In re Yaccarino, 117 N.J.175 (1989). Counsel also contended that the grievants did not follow the procedures established by the Social Security Administration for the filing of

[10]Counsel raised this concern during argument before us, in order to preserve the issue for appeal.

grievances. Any questionable conduct by the Social Security Administration in its referral of this matter should be resolved within that agency.

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

Dated: 10/18/00

By _____
LEE M. HYMERLING
Chair
Disciplinary Review Board

SUPREME COURT OF NEW JERSEY

DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Joel Solow
Docket No. DRB 99-415

Argued: February 3, 2000

Decided: October 18, 2000

Disposition: Reprimand

Members	Disbar	Three-month Suspension	Reprimand	Admonition	Dismiss	Disqualified	Did not Participate
Hymerling		X					
Peterson			X				
Boylan			X				
Brody			X				
Lolla							X
Maudsley							X
O'Shaughnessy			X				
Schwartz							X
Wissinger			X				
Total:		1	5				3

Robyn M. Hill 12/20/00
Robyn M. Hill
Chief Counsel