SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 11-328
District Docket Nos. IV-2008-0007E
and IV-2008-0008E

IN THE MATTER OF	:
JOSEPH R. GIANNINI	:
AN ATTORNEY AT LAW	:

Corrected Decision

Argued: January 19, 2012

Decided: March 26, 2012

Giacomo Francesco Gattuso appeared on behalf of the District IV 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 IV Ethics Committee (DEC). Respondent was charged with having violated RPC 1.1 (no subsection cited), RPC 3.1 (filing frivolous pleadings), RPC 3.4 (d) (making frivolous discovery requests or failing to make

reasonably diligent efforts to comply with discovery requests by an opposing party), RPC 3.4(e) (in trial, alluding to any matter that the lawyer does not reasonably believe is relevant or that will not be supported by admissible evidence), RPC 8.2 (no subsection cited) (making reckless statements about judicial officials), and RPC 8.4(d) (conduct prejudicial to the administration of justice).[1]

We determine to impose a censure.

Respondent was admitted to the New Jersey bar in 1984. He has no prior discipline. Although the record before us contains references to respondent as a California attorney, he is not listed on the official role of attorneys maintained by the State Bar of California.

Barry W. Rosenberg, Esq., filed a grievance against respondent for alleged misconduct related to litigation initiated by Rosenberg against respondent's sister/client,

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[1] Although the complaint did not cite subsection (d), that subsection was clearly implicated through the reference to conduct "prejudicial to the administration of justice."

Phyllis Giannini (Giannini). Both Rosenberg and Giannini testified at the DEC hearing. Respondent elected not to testify.

According to Rosenberg, Donna Davis, the president of Mara Court Association (Mara Court), a condominium association, met with him in his capacity as Mara Court's general counsel, at which time they discussed Mara Court's poor financial condition and ways to improve it.

Davis had noticed that three predecessor presidents had taken stipends and modest monthly salaries and had not paid their $50 per month condominium dues to Mara Court, during their tenures as president. Rosenberg advised Davis that those actions violated the association's declarations of covenants and bylaws. He thought that legal actions to recoup those funds from the prior presidents would be appropriate.

In April 2006, Mara Court authorized Rosenberg to file lawsuits against Giannini and her two predecessors. The suit against Giannini sought the return of $7,250.

During questioning by the presenter, Rosenberg recalled the events of the litigation as follows:

> We filed the Complaint against Ms. Giannini in Superior Court of New Jersey, Law Division, Special Civil Part. It was assigned to Judge Laskin. I propounded

discovery upon [Giannini]. No discovery was propounded upon me.

. . . .

The Court awarded $3,000 in attorney's fees to me. A judgment was signed. I then started post-judgment discovery collection proceedings. I believe I sought her -- I believe we applied for a docketed judgment statement from the Court, and while that occurred [respondent] on behalf of his sister began to file post-judgment motions with the Court. As those motions were received, I submitted responses to the Court. I believe Judge Laskin had or heard one or more motion days. All of the defendant's post-judgment motions were denied.

[Q.] May I interrupt you one second?

[A.] Certainly.

[Q.] Was one of those motions a motion to seek the deposition of a judge?

[A.] Yes.

[Q.] What judge was that?

[A.] Judge Vogelson.

[Q.] And was that filed post trial?

[A.] Yes.

[Q.] Was that motion in relation to — was there another person indicated to be a deposition of as well?

[A.] Present Judge Katz was asked to be deposed. I believe Judge Katz was the county counsel or had just left county counsel at the time this motion was submitted.

[Q.] Continue on. I'm sorry.

MS. PICKER [Panel Chair]: What was Judge Vogelson's involvement?

[A.] Judge Vogelson was a high school classmate of the Mara Court president, Donna Davis, and --

MS. PICKER: Was he judge [sic] at any point in this case?

[Q.] He had nothing to do with this case.

MS. PICKER: Okay.

[A.] It was never assigned to him.

MR. GIANNINI: Objection.

MS. PICKER: You'll have the chance to cross.

[A.] The case was never assigned to him.

MS. PICKER: Overruled.

[A.] I never consulted Judge Vogelson about this case; I never met with him about this case; and Judge Vogelson was not a witness in this case. I proceeded with post-judgment collection procedures. I believe I attained a writ of execution. At some point the defendant filed a motion to stay execution at which point Judge Laskin ruled that execution would be stayed upon the posting of a $5,000 cash bond or $5,000 cash or a bond of approximately $10,000 if memory serves correctly. I believe the defendant posted the $5,000 with the Court after the post-judgment motions were denied. After the post-judgment motions were denied, I believe the defendant then took an appeal to the Appellate Division of the Superior Court. Once the Appellate Division heard -- once the Appellate Division had received briefs, heard oral arguments several months later and issued an opinion affirming Judge Laskin with the exception of a reduction in the principal damages award, I believe [respondent] filed some supplemental motions with the Appellate Division which were denied; and once the Appellate Division concluded its work, I then submitted an

application for counsel fees to the Appellate Division consistent with the same fee shifting document that the condo association works with. The Appellate Division awarded a counsel fee of $1,000 and then the defendant filed an application with the New Jersey Supreme Court for certification.

[Q.] And did you receive attorney's fees at that level as well?

[A.] At the Supreme Court?

[Q.] Yes.

[A.] After the Supreme Court denied defendant's petition for certification, I submitted a counsel fee affidavit and the Supreme Court awarded a counsel fee of approximately $650.

[Q.] Let me ask you this. In the underlying case, before the trial was discovery served upon you, meaning request for discovery [sic]?

[A.] None.

[Q.] When you went to trial, did [respondent] present any documentation at the time of the trial?

MR. GIANNINI: Objection. Overbroad.

MR. GATTUSO: I'll rephrase it.

[Q.] Did [respondent] present any written documentation in defense of his position at the time of trial?

[A.] I don't believe so. I believe his witnesses testified verbally but I don't recollect any exhibits being submitted on behalf of the defendant at this point.

[Q.] Other than the depositions of Judge Vogelson and now Judge Katz, did he seek the deposition of anyone else?

[A.] Not that I can recall.

[T42-15 to T50-6.][2]

The parties agreed that the minutes of a 2003 Mara meeting referenced the approval of salaries and waiving of dues for members serving as association president.[3] In his answer to the ethics complaint, respondent accused Rosenberg of having hidden those minutes and of completing "a fraud on the Court and Phyllis Giannini."

Rosenberg testified about those minutes, when questioned by the presenter:

> [Q.] Mr. Rosenberg, were any minutes presented in the underlying litigation?
>
> [A.] I did not offer any that I can represent and I do not believe the defendant submitted any into evidence during the defendant's defense of its case.
>
> [Q.] Okay. Were there any amendments to the bylaws presented in the underlying litigation?

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[2] "T" refers to the transcript of the May 2, 2011 DEC hearing.

[3] The minutes of the September 21, 2003 meeting reflect the practice as having been authorized. The condominium board never amended the by-laws to reflect it. The minutes were included as an attachment to an exhibit not in evidence. Neither respondent nor the presenter contested their accuracy.

[A.] No, there were not, the reason being because the association had never amended its governing documents in order to permit officers to take salaries so there were no such —

MR. GIANNINI: Objection. Overbroad.

But he didn't answer the question. I think the question was were there ever any amendments to the bylaws.

MS. PICKER: I'm going to allow the answer. This is a relaxed Rules of Evidence. There's no jury present and it will expedite matters if he can simply explain it.

[Q.] Mr. Rosenberg, was an amendment to the bylaw necessary in order for there to be a stipend paid to the president?

[A.] Yes.

MR. GIANNINI: Objection. Calls for a legal conclusion.

MS. PICKER: He's the lawyer for the association. I think there's a certain degree of expertise that goes along with the fact that he's the lawyer for the association that he can answer that question so I'm going to overrule that objection.

[Q.] Was there ever an amendment made on that basis?

[A.] No, there was not.

[Q.] And was that the basis of Judge Laskin's opinion in the underlying case?

[A.] Yes.

[1T54-15 to 1T56-4.]

Respondent presented no evidence to refute Rosenberg's account of events. As reflected in the hearing panel report, however, respondent filed "approximately 11 motions to dismiss

the ethics complaint". The panel report listed twenty-four exhibits, C-1 through C-24, that respondent generated in that regard. The DEC determined that several items were inadmissible because they were either "confidential" or unfounded.[4]

Respondent was not sworn as a witness. According to the DEC, however, he was allowed to "testif[y] of a sort." It appears that the DEC may have intended to treat respondent's entire presentation as his sworn testimony.

With regard to the seminal issue in the underlying litigation — Giannini's authority to take a salary and withhold condominium dues — respondent introduced no evidence that the bylaws were changed to allow the practice. The trial judge's written opinion was to the point:

> Defendant has produced no documents, whatsoever, regarding minutes, amendments to By-Laws, resolutions, etc. Defendant makes a comment in his closing argument which has no basis in law or fact. Defendant argues that the trustees in 1992 authorized the

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[4] As detailed below, in a synopsis of respondent's brief to us, the documents omitted from the record appear to be ethics grievances and supporting affidavits from respondent, which he sought to file with the DEC against the DEC secretary, John Palm, Esq., against Rosenberg, and against the presenter.

> president of the Association to receive the presidential stipend and, to forego paying the $50.00 monthly assessment. There is absolutely nothing in any minutes, writings, documents or anything else which contains that information. The closing argument by defendant has nothing to do with the facts and evidence in this case.
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> . . . .
>
> It's a very uncomplicated matter. The rules and regulations of the Association prohibit the president from being paid. It's that simple. The president paid herself $100.00 a month, and benefited by the fact that she didn't pay the condominium fee of $50.00 a month. She owes the Association, the sum of $7,250.00. She was not authorized to take that money from the condominium Association. Judgment is entered in favor of the plaintiff for the aforesaid amount.
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> [Ex.P-A at 4 to 5.]

On October 16, 2006, respondent filed a notice of motion to vacate the $10,250 judgment and to enter judgment for the defendant, with supporting documents. Respondent claimed that Davis had "exploited her public trust [as a Camden County employee] for private gain of over $10,250 for which she is a beneficiary." He claimed that she had "unclean hands in refusing to provide an alternative to litigation" and had sought "to exploit her special position" in Camden County, due to her "long-standing intimate relationship with Camden County Presiding Judge Allan Vogelson.

Respondent stated further:

> Donna Davis obviously wanted the case tried in Camden County in order to exploit her special position. Furthermore, Judge Allan Vogelson is best friends with Donna Davis and visits her at her home, which is next door to defendant's home. Judge Vogelson is one of the most influential people in Camden County. He has an enormous public library named after him as well as this Court's Presiding Judge. Judge Vogelson's courtroom is next door to this Court. There is no denying Donna Davis has a long standing intimate relationship with the Courts in Camden County that reinforces the appearance that she has special influence. In sum, in view of the foregoing, for this Honorable Court, to not enter judgment for defendant is to confirm the "princess" status of Donna Davis in the Camden County Courthouse, as well as the unlawfulness of this Court's judgment for $10,250 in her favor.
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> [Ex.P-B at 7 to 8.]

Respondent also alleged that the court had either "forgot[ten] what the witnesses said" or was "heavily biased in favor of Donna Davis," when rendering its decision against Giannini.

Respondent continued:

> The pink elephant lurking in the background in this proceeding is Donna Davis is best friends with this Court's presiding judge, the Honorable Allan Vogelson. [Giannini] submits [that] Donna Davis came into this Court with knowledge of that fact, intending to exploit this fact for personal

> aggrandizement. . . . [Giannini] has stated under oath that she has seen Judge Vogelson at Donna Davis's house while this case was pending. Judge Vogelson clearly has had ex parte contacts with Donna Davis. [Giannini] wants to inquire into the nature and extent of Judge Vogelson's relationship with Donna Davis.
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> [Ex.P-C3.]

In a December 20, 2006 letter to the parties denying respondent's various post-judgment motions, trial Judge Laskin stated as follows:

> This case highlights a very serious problem arising from the liberality in allowing lawyers from other jurisdictions to practice in New Jersey. The Motion seeking the deposition of Judge Vogelson contained all kinds of innuendoes about the relationship between Judge Vogelson and the witness who appeared as testifying on behalf of the Mara Court Association. That witness was Donna Davis, the President of the Association. Mr. Giannini filed a rather lengthy Certification which had absolutely nothing to do with the underlying litigation. In that Certification, he argued that the witness, Donna Davis, is "best friends with this Court's presiding judge, the Honorable Allan Vogelson." First of all, Judge Vogelson has nothing to do with this case. Secondly, Judge Vogelson is not this "Court's presiding judge." Judge Vogelson is in the Chancery Division and has absolutely nothing to do with the cases in the Special Civil Part. In addition to the foregoing, Mr. Giannini argues that Judge Vogelson may be a friend of Donna Davis. Whether or not Judge Vogelson is a friend of Donna Davis is

none of my concern, and, has absolutely nothing to do with this case. Phyllis Giannini states, under oath, that she saw Judge Vogelson in the company of Donna Davis while the case was pending. Using the vernacular, I could say to Ms. Giannini, "So what?" Does Giannini suggest that because Judge Vogelson and Donna Davis may know each other, that [sic] there would be some undue influence on this Court? If Mr. Giannini were a New Jersey attorney, this kind of action and defamatory remarks could subject him to an ethics inquiry. This is very loose and sloppy practice. I want to remind Mr. Giannini that this is not California, and, Hollywood is quite a few thousand miles from here. That kind of nonsense may be acceptable where films are made, but it is not appreciated in this jurisdiction.

In addition to all of the foregoing, the Certification of Giannini states that

> "The pink elephant lurking in the background in this proceeding is Donna Davis is best friends with this Court's presiding judge, the Honorable Allan Vogelson."

It's amazing how Mr. Giannini suggests that Donna Davis is "best friends" with Judge Vogelson. It's amazing to me how he would know that fact. Judge Vogelson is assigned to the Chancery Division, and, I strongly doubt whether or not he knows about this case, cares about this case, or if he truly has the type of relationship with Donna Davis, as alleged by Mr. Giannini. I'll make no further comments regarding the unbelievably absurd Certification.

> Though I have ruled that the Motions are denied, I must comment regarding the liberality of allowing out-of-state attorneys to practice in New Jersey.[5]
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> [Ex.P-D3.]

On January 11, 2007, respondent filed a motion for reconsideration in the Appellate Division. He did not retreat from his earlier position, stating that

> Donna Davis admittedly has a 40 year up-close and personal relationship with Camden County Judge M. Allan Vogelson. Appellant lives next door to Donna Davis. Davis is single. Appellant has seen Judge Vogelson visiting Donna Davis at her home in the afternoon. Donna Davis's former boss Camden County Counsel Deborah Silverman Katz is also a Camden County Judge.
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> Trial judge Lee B. Laskin, while sitting in the Courtroom adjacent to Judge Vogelson's courtroom, refused to transfer the case on appeal to Gloucester County. It was argued there was an admittedly related case pending there, and transfer should be made to avoid any possible conflict of interest or appearance of impropriety. Judge Laskin refused to transfer the case.
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> This Honorable Court, as well as Judge Laskin, is further on notice respondent

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[5] Judge Laskin proceeded to describe respondent's unfamiliarity with the most basic rules of civil procedure. That unfamiliarity led her to mistakenly conclude that respondent was not authorized to practice law in New Jersey.

> Donna Davis is represented by Barry W. Rosenberg, Esq. Mr. Rosenberg is married to Appellate Judge, the Honorable Francine I. Axelrad. These publicly known special relationships when the record makes clear Donna Davis brags that she has **special connections** warrant this Court's scrupulous attention to the appearance of any possible conflict of interest or appearance of a conflict of interest that could result from this Court's decision.
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> [Ex.P-E3.]

Respondent also accused Davis of perjury — specifically, lying at trial. He even demanded the minutes of Mara Court for the preceding three years, items that, again, Rosenberg testified were never requested during the trial.

Exhibit P-F, respondent's motion for the Appellate Division to reconsider its opinion and to vacate Judge Laskin's order, stated that (a) "Donna Davis admittedly had a 40 year up-close and personal relationship with Judge M. Allen Vogelson. Appellant lives next door to Donna Davis. Davis is single. Appellant has seen Judge Vogelson visiting Donna Davis at her home in the afternoon;" (b) "Judge Laskin intentionally and deliberately misrepresented the testimony of the witnesses in his decision;" and (c) "This [Appellate Division] Court erred in holding that it was limited in its scope of review and that it must accept the trial Court's findings of fact. An appellate

court's review of a trial court's decision under the 'business judgment' rule is de novo on the record." The hearing panel report states:

> In Exhibit P-G, respondent is asking for reconsideration of Laskin's decision based upon an alleged conflict in that Donna Davis had been an employee of Camden County and that somehow NJS 40A:9-22.1 (Local Government Ethics Law) applies in the underlying Mara Court litigation. Page 1.
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> In P-H, filed January 16, 2008, respondent again asks for appellate reconsideration based upon the "municipal family doctrine" and a litany of complaints that Donna Davis lied. Pages 1 and 7.
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> In P-I, respondent argues that the attorney fees of grievant should be reduced. However, he also alleges that because grievant's wife is an appellate Judge that the grievant somehow "stood in this shadow of his wife's robe, and sought pecuniary advantage for himself and his family without performing an attorney's customary care, skill and prudence". Page 3.
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> In P-J, dated January 29, 2008, respondent asks for a 3 judge panel based upon Donna Davis' relationship with a Judge not involved in the case, and the fact that Donna Davis, as a public employee was representing in her private capacity (as president), the Mara Court Condominium Association in court, and that somehow, this should have had some effect on the Mara Court litigation. Page 1.
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> In P-K, the Petition for Certification to the NJ Supreme Court, respondent argues:
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> > A. This Court should Grant Certiorari Because there is a fair

> Possibility that some portion of the public might believe that the decisions below are the product of a clandestine fix;
>
> B. Review Should be Granted Because the Decisions below Discard This Court's Precedent Under the Municipal Family Doctrine, and Thus Create the Appearance of a Fix; and
>
> C. Review Should be Granted Because the Decisions Below Fail to Analyze and Trample the Local Government Ethics Law and Thus Create the Appearance of a Fix. Page 1.

In P-L, respondent filed a motion asking that the appellate court judgment be vacated based upon the fact that the hearing panel was biased and partial. Page 1. He based this upon the fact that one of the two panel judges had, in previous years, appeared on a panel with grievant's wife and therefore, the judge was predisposed to grant the requests and attorney fee requests of grievant, page 2-3 and R-12.

Lastly, in P-M, respondent advises grievant that he will only pay the fees if grievant dismisses the ethics complaints which gave rise to the current dockets.

[HPR8.][6]

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

After the Supreme Court denied respondent's petition for certiorari, on July 28, 2008, Rosenberg sent respondent a letter proposing to accept $326.58 that he held in escrow for the parties, in lieu of filing a $1,000 to $1,500 fee application with the Supreme Court. Respondent returned the letter to Rosenberg with his handwritten note: "OK, if you + Davis dismiss ethics complaints. Otherwise" [end of note].

As indicated previously, between the filing of Rosenberg's grievance (January 17, 2008) and the May 2, 2011 DEC hearing, respondent filed "approximately eleven motions to dismiss the ethics complaint." His papers, too, are chock-full of similar comments about the individual judges that respondent complained about, as well as the "corrupt" judicial system in Camden County.

Respondent also made a motion to suppress two paragraphs of the ethics complaint against him, twelve and thirteen, which state as follows:

> The Respondent suggested in written communications that the underlying decisions were "100% wrong" and the Judge or Referee was indifferent to it and suggested their attitude was summarized in the following fashion:
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> > "I don't care what evidence and the law are." In addition, Respondent said the following:

> "That is the way it is in Camden Superior Court because Donna Davis is best friends with Judge Vogelson and Rosenberg is married to an Appellate Judge. They can do anything they want. We are best friends with them. We want them to win so Davis can entertain Judge Vogelson in style when he stops over for an afternoon catch up, and Barry Rosenberg can make a few dollars and pay his share of his wife's expenses."
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> "I am attaching further a copy of Appellate Opening Brief that documents that Judge Laskin deliberately and intentionally misrepresented the witnesses' testimony, except for Donna Davis."

In additional communications, the Respondent stated that Judge Axelrad's household income was substantially increased by the Appellate Court Decision favoring her husband, Barry Rosenberg and Donna Davis. In addition, the respondent states that Mr. Rosenberg "acted like a spoiled little boy and has committed professional malpractice: hiding under his wife's robe every step of the way to cover it up."[7]

[C¶12-C¶13.][8]

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[7] In Exhibit P-I, respondent again referred to Rosenberg as having "stood in the shadow of his wife's robe."

[8] "C" refers to the ethics complaint.

Respondent persuaded the hearing panel that R. 1:20-7 (f) pertained to him, dealing with immunity from suit granted to persons involved in an ethics proceeding, including grievants, witnesses and the like, regarding statements made during an ethics investigation. Respondent argued that the rule applied to his communications with the investigator and that they were confidential in nature. Thus, they were suppressed.[9]

Respondent filed a December 2, 2011 brief with Office of Board Counsel, (the OBC), seeking multiple forms of relief, including the dismissal of the ethics complaint.

First, respondent sought to disqualify DEC Secretary John Palm, claiming that he had improperly withheld action on his counter-grievance against Rosenberg, for nine months.

R. 1:20-3(e), dealing with the screening and docketing of ethics grievances, states, "The secretary shall evaluate inquiries and grievances in accordance with this rule and shall docket, decline, or dismiss the matters within 45 days of their

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[9] The DEC erroneously applied the rule, which is designed to protect grievants, witnesses, and others, from suit. The rule does not apply to respondent-attorneys who are the targets of ethics investigations.

receipt. The secretary shall not conduct an investigation of a grievance." Respondent argued that Palm intentionally "sat" on his grievance, without having it investigated, for the nine months between the grievance date (April 29, 2009) and its docket date (January 25, 2010).

Respondent also argued that Palm should not have handled the grievance against him because of his earlier mishandling of his grievance against Rosenberg, and that he, respondent, would have been found innocent of all charges, had his grievance against Rosenberg been handled more swiftly. The several documents in support of respondent's assertions are a re-hashing of his prior unsubstantiated claims against Rosenberg, and Judges Laskin, Axelrad, and Katz, among others.

Respondent argued that we have original jurisdiction to hear his grievance against Secretary Palm and Presenter Gattuso, citing R. 1:20-7(j). That rule gives us original jurisdiction over grievances against ethics panel members "in connection with any appeal or authorized review of a matter in the normal course under R. 1:20-15(e)," which deals with ethics appeals.

Here, respondent's grievance against Palm emanates from his alleged mishandling of respondent's grievance against Rosenberg. Importantly, when, on January 20, 2011, the DEC dismissed

respondent's grievance against Rosenberg, respondent had twenty-one days to file a timely notice of appeal (R. 1:20-15(e)). He failed to do so.[10]

Because there was no ethics appeal to act as the vehicle for grievances against Rosenberg, Palm, and Gattuso, respondent lost his opportunity to file claims with us about alleged mishandling of those matters. Therefore, we determine not to consider those portions of respondent's brief relating to alleged wrongdoing by Rosenberg, Palm, and Gattuso.

The DEC found that respondent's representation of Giannini was not competent. He offered "non-cognizable," inappropriate defenses, unsupportable allegations of corruption, and did not show the "reasonable knowledge and skill" expected of attorneys, a violation of RPC 1.1 (no subsection cited).

The DEC further found that "the entire litigation strategy was based upon spurious, unproven accusations against the parties and Court personnel, most specifically, various Superior Court Judges, frivolous motions and as noted by Judge Laskin . .

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[10] Respondent contacted the OBC about filing a notice of appeal. Although he was explicitly instructed on how to proceed, he never did so.

. 'personal animus, based upon fabricated . . . facts,'" a violation of RPC 3.1.

The DEC found that respondent violated RPC 3.4(d) and (e) by his "continually" requesting the depositions of judges who had no association with the case and by making repeated references to an alleged, yet wholly unsubstantiated, relationship between Judge Vogelson and Davis.

The DEC found that respondent violated RPC 8.2, inasmuch as his

> allegations and insinuations about Davis and Judge Vogelson, a judge not involved in the Mara Court litigation had no relevance to the litigation nor any place in any post-trial argument, appellate brief or petition for certification to the NJ Supreme Court. The statements made by respondent regarding Judge Cuff[11] were clearly made with a reckless disregard as to their truth (or falsity), therefore, respondent's right to free expression under the Constitution is not implicated.
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> [HPR12.]

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[11] In his July 2008 petition for certification, respondent made the unsupported statement that Appellate Division Judge Cuff had a prior long-standing relationship with Judge Axelrad.

The DEC also found a violation of RPC 8.4 (no subsection cited), because respondent's actions were "either dishonest or prejudicial to the administration of justice." Again, the DEC pointed to respondent's repeated allegations of an "intimate relationship" between Davis and Judge Vogelson. Similarly, the DEC frowned on respondent's repeated assertion that the Appellate Division proceeding was corrupt simply because Rosenberg's wife served as an Appellate Division judge.

Finally, the DEC was troubled by the "audacity" of respondent's handwritten attempt to settle Rosenberg's counsel fee alongside a withdrawal of the ethics grievance against respondent. The DEC found respondent's conduct in violation of RPC 8.4 (no subsection cited).

The DEC recommended a reprimand, without citing case law in support of its recommendation.

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

Respondent represented his sister, Phyllis Giannini, in a suit by Mara Court, to recover $7,250 in compensation that she had taken, when acting as Mara Court president.

Rosenberg, Mara Court's litigation attorney, testified that he had propounded discovery upon respondent in that litigation, but, in return, respondent made no discovery requests of Mara Court. The judgment against Giannini that followed was predictable. Respondent's "scorched earth" attempts to undo the judgment were not. They 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.

The attacks began in earnest after Judge Laskin issued a strongly worded opinion critical of respondent. Respondent then devoted his energy to personal attacks on Davis and Judge Vogelson.

In post-judgment pleadings for reconsideration, respondent turned his ire on Judge Laskin, accusing her of harboring a "heavy bias" in favor of Davis, and then reiterating the unfounded charges against Judge Vogelson.

In his Appellate Division appeal, respondent accused Davis of perjury and lying at trial. He then accused Judge Laskin of intentionally misrepresenting the testimony of witnesses in the underlying trial, an unfounded accusation. Respondent's insults and false allegations continued into his pleadings before the

Supreme Court, wherein he accused the Camden County judiciary of "a clandestine fix," alleged that there was a relationship between Davis and Judge Vogelson and also that Rosenberg's spouse, Appellate Division Judge Axelrad, was somehow implicated in an improper handling of the appeal. Moreover, respondent claimed that Judge Axelrad and Rosenberg improperly "profited" from the Mara Court litigation and that Rosenberg "stood in the shadow of his wife's robe," charging that he was incapable of performing his duties as an attorney with the required "care, skill and prudence."

For the myriad instances of unprovoked, inflammatory, disparaging, and fictitious statements about various judges and other parties, contained in respondent's pleadings and other writings over the course of the representation, he is guilty of having violated RPC 3.1 (a lawyer shall not . . . assert an issue . . . unless the lawyer knows or reasonably believes that there is a basis in law and fact for doing so that is not frivolous), 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, adjudicatory officer or other public legal officer), and RPC 8.4(d) (engaging in conduct prejudicial to the administration of justice).[12] So, too, it is improper to attempt to have an ethics grievance withdrawn. Respondent attempted to do so in a handwritten communication to Rosenberg, thereby once again violating RPC 8.4(d).

Respondent was charged with violating RPC 3.4(d) (making frivolous discovery requests). On this score, respondent made repeated attempts, over the course of the representation, to obtain testimony from Judges Vogelson and Katz. Those judges had no nexus whatsoever to the litigation. It was wholly unreasonable for respondent to have sought their testimony in the first instance. Yet, respondent insisted, at the Appellate Division and Supreme Court levels, that the judges' testimony was critical to proving Giannini's case. There was no reasonable basis in fact for respondent to have made those repeated

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[12] Respondent has raised a First Amendment argument that his criticism of parties to the action and judges involved and not involved in this matter is protected speech. Spurious as that argument may be, under R. 1:20-15(h), such constitutional challenges are preserved for Supreme Court consideration.

demands. Clearly, respondent's actions in this regard violated RPC 3.4(d).

By the same token, respondent violated RPC 3.4(e), which prohibits an attorney, in trial, from alluding to any matter that the lawyer does not reasonably believe is relevant or that will not be supported by admissible evidence. Respondent could not have reasonably believed that the outrageous statements contained in his pleadings were true. Neither he, nor Giannini, his sole witness, provided a scintilla of credible evidence to support the fraudulent outcome theory in the Mara Court litigation and that widespread collusion and corruption in Camden County were at the heart of the case. Respondent's actions in this regard violated every aspect of RPC 3.4(e).

With respect to RPC 1.1, presumably (a) (gross neglect), the DEC found a lack of "competence" in respondent's handling of the Mara Court litigation. Perhaps influenced by the heading in the rules for RPC 1.1, which reads "Competence," the DEC did not recognize that RPC 1.1 addresses an attorney's inattention to a client's matter, as opposed to an inability to adequately represent the client. Respondent did not neglect the Mara Court litigation. To the contrary, he was overzealous, to a fault, losing an uncomplicated case and, thereafter, running it

doggedly through to the Supreme Court, where he lost again. Incompetence may have been at issue, but neglect was not a part of the equation. We, therefore, dismiss the RPC 1.1 charge.

In summary, respondent is guilty of having violated RPC 3.1, RPC 3.4(d) and (e), RPC 8.2(a), and RPC 8.4(d).

Disrespectful or insulting conduct to persons involved in the legal process leads to a broad spectrum of discipline: from an admonition to a term of suspension. See, e.g., In the Matter of Alfred Sanderson, DRB 01-412 (February 13, 2002) (admonition for attorney who, in the course of representing a client charged with DWI, made discourteous and disrespectful communications to the municipal court judge and to the municipal court administrator; in a letter to the judge, the attorney wrote: "How fortunate I am to deal with you. I lose a motion I haven't had [sic] made. Frankly, I am sick and tired of your pro-prosecution cant;" the letter went on to say, "It is not lost on me that in 1996 your little court convicted 41 percent of the persons accused of DWI in Salem County. The explanation for this abnormality should even occur to you."); In re Geller, 177 N.J. 505 (2003) (reprimand for attorney who filed baseless motions accusing two judges of bias against him; failed to expedite litigation and to treat with courtesy judges

(characterizing one judge's orders as "horseshit," and, in a deposition, referring to two judges as "corrupt" and labeling one of them "short, ugly and insecure"), his adversary ("a thief"), the opposing party ("a moron," who "lies like a rug"), and 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"); failed to comply with court orders (at times defiantly) and with the disciplinary special master's direction not to contact a judge; used means intended to delay, embarrass or burden third parties; made serious charges 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 case, the attorney 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); In re Stanley, 102 N.J. 244 (1986) (reprimand for attorney who engaged in shouting and other discourteous behavior toward the court in three separate cases; the attorney's "language, constant interruptions, arrogance, retorts to rulings displayed a contumacious lack of respect. It is no excuse that

the trial judge may have been in error in his rulings."); and In re Vincenti, 92 N.J. 591 (1983) (one-year suspension for attorney who displayed a pattern of abuse, intimidation, and contempt toward judges, witnesses, opposing counsel, and other attorneys; the attorney engaged in intentional behavior that included insults, vulgar profanities, and physical intimidation consisting of, among other things, poking his finger in another attorney's chest and bumping the attorney with his stomach and then his shoulder).

Attorneys who have attempted to have ethics grievances withdrawn have received either an admonition or a reprimand. See, e.g., In the Matter of R. Tyler Tomlinson, DRB 01-284 (November 2, 2001) (admonition for attorney who improperly conditioned the resolution of a collection case upon the dismissal of an ethics grievance filed by the client's parents) and In re Mella, 153 N.J. 35 (1998) (reprimand for attorney who attempted to have the grievant dismiss the grievance in exchange for a fee refund and some additional remedial conduct; the attorney also failed to act with diligence and to communicate with clients in two matters); and In the Matter of _____, DRB 91-254 (January 22, 1992) (private reprimand for attorney who prepared a "Payment Affidavit and Cash Receipt" intended to

force the client to withdraw all ethics grievances against him received a private reprimand (now an admonition)).[13]

Respondent's misconduct in the Mara Court litigation was misguided, undoubtedly influenced by Giannini's view of the legal system. A generous view of respondent would take into account that, as an out-of-state attorney, he was unfamiliar with New Jersey practice and was earnestly trying to help his sister. However, even an out-of-state attorney would know better than to lodge serious, wholly unsupportable claims against members of the judicial system.

Respondent's misconduct in this regard is similar to that in Geller, where the attorney also filed baseless motions accusing judges of bias against him, serious charges without any reasonable basis. Geller characterized a judge's orders as "horseshit," two judges as corrupt, his adversary as a thief, and an opposing party as a moron. Geller also "defiantly" failed

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[13] Private reprimands, abolished in 1995 and replaced by admonitions, were confidential. Hence the omission of the attorney's name.

to comply with court orders and the special ethics master's direction not to contact a judge, an element not present here.

On the other hand, a compelling mitigating factor partially explains the reprimand in Geller – mitigation that is not present here. Geller's misconduct took place in the context of a highly emotionally-charged proceeding over the custody of his own children. While this case presented respondent with a family member as a client, the dispute was over a small amount of money, money that was not respondent's.

An aggravating factor present here is respondent's failure, to this day, to take responsibility for his wrongdoing. His brief to us "doubles down" on his view of the New Jersey judiciary and of the disciplinary system. He levels the same (and some new) misguided allegations that were prominent aspects of the Giannini litigation, including that he should have been permitted to depose Judge Vogelson and county counsel; the DEC "stack[ed] the deck" against him and "exploit[ed] their public position to benefit their private practice[s];" the DEC acted "like a bull seeing a red cape held by a trifling," regarding his allegations against them; the DEC dealt "cards from the bottom of the deck"; and he should not be "tarred and feathered because the New Jersey Appellate Courts do not maintain a trial

transcript. Especially here, where Barry Rosenberg's wife is an Appellate Judge, and she recently served side by side with the Presiding Judge who wrote the decision."

The only mitigating factor is respondent's lack of prior discipline, since his 1984 admission to the New Jersey bar. However, in light of the fact that he does not regularly practice law here, we do not consider it as compelling a factor as we might have, had he been a full-time New Jersey attorney.

For its similarity to Geller, a reprimand is the appropriate starting point for discipline here. However, the compelling mitigation in Geller (the attorney's own custody battle) is not present here. In addition, respondent's brief to us and presentation at oral argument were steeped with an arrogant failure, to date, to recognize any wrongdoing. Finally, respondent attempted to improperly have the grievance against him withdrawn. Because this case is more serious than Geller it warrants the imposition of a more severe sanction. We determine to impose a censure.

Vice-Chair Frost voted for a three-month suspension.

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
Louis Pashman, Chair

By: Julianne K. DeCore
Julianne K. DeCore
Chief Counsel