Book

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 94-436

IN THE MATTER OF
JOHN A. HARTMANN, III
AN ATTORNEY AT LAW

Decision
of the
Disciplinary Review Board

Argued: April 19, 1995

Decided: July 10, 1995

David Dembe appeared on behalf of the District VII Ethics Committee.

Charles Casale, Jr. appeared on behalf of respondent.

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

This matter was before the Board based on a recommendation for the imposition of an admonition filed on behalf of the District VII Ethics Committee ("DEC"), which the Board elected to bring on for a hearing pursuant to R. 1:20-15(f)(4). The formal complaint charged respondent with violations of RPC 3.4(c) (knowingly disobeying an obligation under the rules of a tribunal), RPC 3.5(c) (engaging in conduct intended to disrupt a tribunal) and RPC 8.4(d) (engaging in conduct prejudicial to the administration of justice).

Respondent was admitted to the New Jersey bar in 1969. He has no prior disciplinary history.

Respondent was charged with misconduct in two separate matters. The facts giving rise to the formal complaint are succinctly set forth in both the Stipulation of Facts (Exhibit J-3) and the Hearing Panel Report. By way of brief summary, however, in one matter, Leon v. Leon, respondent was charged with disobeying an order requiring him to pay counsel fees to opposing counsel for his tardiness in appearing at a trial call. Specifically, respondent failed to pay those fees for a period of over fifteen months from the date of the initial order requiring him to do so. In fact, it was not until the court issued a warrant for respondent's arrest that he finally paid the counsel fee, which, by then, had been reduced to a judgment. In the interim, however, respondent ignored three additional court orders requiring him to pay that same fee. One of those orders included an order to show cause requiring his appearance before the court, to which respondent sent his associate in his place. While the order itself did not contain any language specifying the necessity of a personal appearance, the assignment judge who handled the matter apparently expected respondent himself to appear. Therefore, when respondent's associate appeared in his stead, the judge issued a warrant for respondent's arrest.

Respondent maintained that, by disobeying the initial and subsequent orders, he availed himself of the choices any private citizen would enjoy under the circumstances, knowing that there could be attendant risks. He further justified his conduct by maintaining that the collection of awarded counsel fees in matrimonial cases is frequently abandoned or otherwise forgotten,

and that, despite the persistent efforts of his adversary, he had hoped that these awarded fees would also be forgotten. With respect to his failure to personally appear on the return date of the Order to Show Cause, respondent testified that he had conflicting obligations and did not believe his personal appearance was necessary.

In another matter, the Feinberg matter, respondent entered a Superior Court judge's chambers on October 9, 1992, without permission, and proceeded to chastise the judge, in a hostile manner, for granting an adjournment in a matter in which respondent represented a party. According to Judge Feinberg's summary, contained in the Stipulation, she began to feel threatened by respondent's demeanor and asked him to leave her chambers.

Respondent expressed remorse over the fact that Judge Feinberg felt threatened by his behavior. However, he admitted that it was not until he received a copy of the judge's memo to Judge Carchman complaining of his conduct that the thought occurred to him that his behavior might have been improper or inappropriate.

Upon receiving a copy of Judge Feinberg's memo to Judge Carchman, respondent wrote what he described as a letter of apology to Judge Feinberg. Respondent attributed his conduct towards Judge Feinberg to the highly emotional nature of the case and to the fact that his client had become angry with him because of the court's adjournment.

* * *

The DEC found respondent guilty of unethical conduct in both matters. Specifically, in the Leon matter, the DEC found that respondent's disobedience of the court's orders violated RPC 3.4(c) (disobeying an obligation under the rules of a tribunal). The DEC made no findings with respect to RPC 3.5(c) (conduct intended to disrupt a tribunal) or RPC 8.4(d) (conduct prejudicial to the administration of justice). In the Feinberg matter, the DEC found that respondent's conduct towards Judge Feinberg violated both RPC 3.5(c) and RPC 8.4(d). The DEC recommended that respondent receive an admonition for his misconduct.

* * *

Following a de novo review of the record, the Board is satisfied that the conclusion of the DEC that respondent was guilty of unethical conduct is supported by clear and convincing evidence. In the Leon matter, respondent repeatedly ignored the court's several orders to pay opposing counsel a fee for his consistent tardiness. Respondent admitted that he intentionally failed to satisfy his obligation under the order, believing that his adversary would simply abandon his efforts to collect the fee. If, indeed, respondent's belief was based upon common practice of the matrimonial bar, at some point it must have occurred to him that his belief was no longer reasonable. Certainly, by the point when his adversary had the order for payment reduced to a judgment, respondent's continued disregard of his obligation, on the basis of his belief that the matter would be forgotten or forgiven, rose to

the level of bad faith. In the interim, respondent's conscious and intentional disregard of his court-imposed obligation necessitated repeated and additional court action for a period of over fifteen months. Respondent's cavalier consumption of valuable court resources to force him to do what he was legally and ethically obligated to do is intolerable.

Respondent's contention that, by his repeated disregard of Court orders, he was exercising options available to any person not only misconstrues the effect of Court orders upon laypersons but also ignores the higher standards imposed upon attorneys as officers of the court. See, e.g., In re Franklin, 71 N.J. 425 (1976). The disrespect for the system exhibited by respondent's conduct was inexcusable and clearly violative of RPC 3.4(c). Furthermore, the expenditure of vast additional court resources to force respondent to comply with the original order warrants additional findings of violations of both RPC 3.5(c) and RPC 8.4(d).

The Board, however, is unable to find that the record clearly and convincingly supports a finding of a violation of RPC 3.4(c) by virtue of respondent's failure to personally appear on the order to show cause. The order itself did not, on its face, require respondent's personal appearance. That being the case, respondent reasonably concluded that a representative from his office could appear in his stead. Respondent may not have chosen the most "politically correct" course under the circumstances. His conduct,

however, did not rise to the level of unethical conduct. The Board, therefore, dismissed that charge.

In the Feinberg matter, respondent engaged in discourteous and abusive conduct toward the court, which conduct could have no other purpose than to intimidate Judge Feinberg into hearing his client's matter that day. Indeed, respondent testified that he inquired of the Judge, during his tirade, why his client's matter could not be heard later that day. So extreme was respondent's conduct towards the judge that she actually felt threatened by respondent and had to insist that he leave her chambers. That respondent's conduct did not occur in open court is of little or no moment. As aptly stated by the presenter in this matter, when referring to contemptuous or discourteous conduct in the face of the court, "the face of the court exists outside of the courtroom." T67. This observation is especially relevant today, when judges have become fairly indulgent of attorneys on a day-to-day basis, particularly in chambers. In return, judges have a right to expect courteous behavior. Certainly, at a minimum, they must feel secure in their person. Respondent's conduct did not foster any sense of security on Judge Feinberg's part. To the contrary, his conduct was both discourteous — worse, threatening — and clearly violated both RPC 3.5(c) and RPC 8.4(d).

The issue of the appropriate quantum of discipline remains. In the past, misconduct similar to that displayed by respondent in the Feinberg matter has resulted in discipline ranging from a reprimand to a term of suspension. See, e.g., In re Mezzacca, 67

N.J. 387 (1975) (attorney publicly reprimanded for referring to a departmental review committee as a "kangaroo court" and for making other discourteous comments); In re Stanley, 102 N.J. 244 (1986) (attorney publicly reprimanded for engaging in shouting and other discourteous behavior toward the court in three separate cases); In re McAlevy, 94 N.J. 201 (1983) (attorney suspended for three months for displaying egregiously discourteous conduct towards a judge and an adversary during the course of a criminal trial. The attorney had previously been the subject of discipline for physically attacking opposing counsel); In re Vincenti, 92 N.J. 591 (1983) (attorney suspended for one year based upon twenty-three counts of verbal attacks on judges, lawyers, witnesses and bystanders). See also In re Grenell, 127 N.J. 116 (1992) (two-year suspension imposed for outrageous conduct before several tribunals, including the disciplinary authorities) and In re Gaffney, 138 N.J. 86 (1994) (two-year suspension imposed upon an attorney who, among other misconduct, baited a judge in open court by calling him a liar).

In those cases in which a suspension was imposed upon the attorney, the misconduct was more egregious and more pervasive than that of respondent herein. Respondent's misconduct in the Feinberg matter most parallels the conduct displayed in Mezzacca, in which a public reprimand was imposed.

Respondent has advanced, in mitigation, that his conduct in the Feinberg matter was the result of the heat of the moment. Nonetheless, respondent is not young and inexperienced, but, rather, is a seasoned matrimonial trial attorney with over twenty-

five years' experience. Having practiced in such a volatile area of law for so long, he should have learned by now the value of courtesy, respect and moderation of temper. As noted by the Court in McAlevy:

> The prohibition of our Disciplinary Rules against undignified or discourteous conduct * * * degrading to a tribunal, DR-7-106(C)(6), is not for the sake of the presiding judge but for the sake of the office he or she holds. Respect for and confidence in the judicial office are essential to the maintenance of any orderly system of justice. This is not to suggest that a lawyer should be other than vigorous, even persistent, in the presentation of a case; nor is it to overlook the reciprocal responsibility of courtesy and respect that the judge owes to the lawyer. Unless these respective obligations are scrupulously honored, a trial court will be inhibited in performing two essential tasks: sifting through conflicting versions of the facts to discover where the truth lies, and applying the correct legal principles to the facts as found. Under the best of circumstances these tasks are difficult; without an orderly environment they can be rendered impossible.
>
> [In re McAlevy, supra, 94 N.J. at 207.]

In addition, while respondent did, indeed, write Judge Feinberg a letter of apology, respondent did not dedicate the bulk of that letter to words of contrition. Rather, respondent used that "letter of apology" as an opportunity to justify his outrageous conduct and to dispute much of the judge's version of events and characterizations of respondent's gestures. See attachment B to Exhibit J-2. As such, the Board cannot accord any substantial weight to respondent's "apology" to mitigate his misconduct in this matter.

In the past, conduct similar to that displayed by respondent in the Leon matter has generally resulted in the imposition of a public reprimand. See, e.g., In re Gaffney, 133 N.J. 65 (1993)

(attorney publicly reprimanded for, among other misconduct, disobeying several court orders requiring him to file an appellate brief in an assigned criminal matter) and In re Lekas, 136 N.J. 515 (1994) (attorney publicly reprimanded for disrupting a municipal court trial and for ignoring the judge's repeated orders for her to sit down or leave the courtroom).

For respondent's misconduct in both Leon and Feinberg, the Board has unanimously determined to impose a reprimand. Two members did not participate.

The Board further determined to require respondent to reimburse the Disciplinary Oversight Committee for administrative costs.

Dated: 7/10/95

By: Elizabeth L. Buff
Elizabeth L. Buff
Vice-Chair
Disciplinary Review Board