SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 93-341

IN THE MATTER OF	:
MELISSA LEKAS,	:
AN ATTORNEY AT LAW	:

Decision and Recommendation
of the
Disciplinary Review Board

Argued: November 17, 1993

Decided: February 28, 1994

George K. Koukos appeared on behalf of the District IIIA 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 the Board based upon a recommendation for public discipline filed by the District IIIA Ethics Committee (DEC). The formal complaint charged respondent with two counts of misconduct, specifically, a violation of RPC 3.5(c) (conduct intended to disrupt a tribunal) and RPC 8.4(b) (criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects).

Respondent was admitted to the New Jersey bar in 1987. She is a sole practitioner in Brick Township, Ocean County.

On April 9, 1991, respondent was arrested for an alleged violation of N.J.S.A. 2C:29-1 (obstruction of justice), resulting from an incident where her dog allegedly bit a child. Respondent

failed to turn the dog over to the police for examination and was charged with violation of the above statute. Respondent appeared at the Brick Township Municipal Court before the Honorable Gerald J. Eak, J.M.C., and agreed to subject the dog to quarantine after she explained that she had been afraid that the dog would be destroyed. In light of the above agreement and of respondent's explanation for her actions – and after she stipulated as to probable cause – a directed verdict of not guilty was entered in response to the state's request for dismissal (Exhibit C-2). Judge Eak was unaware, at that time, that respondent was an attorney.

On April 10, 1991, respondent wrote a letter to Judge Eak regarding her representation of a defendant charged with a violation of N.J.S.A. 2C:33-2a(1), a petty disorderly persons offense. Trial in that matter had been scheduled for April 24, 1991. Respondent's letter stated: "Dear Judge Eak: As the above defendant's counsel, I request a substitution of attorney due to medical and professional complications resulting from my arrest by the Brick Police yesterday" (Exhibit C-2). On April 16, 1991, Judge Eak's clerk telephoned respondent regarding the letter and explained the proper procedure for withdrawal under the court rules. It was settled that respondent would discuss her request with Judge Eak. The record is not clear as to whether respondent asked to speak with Judge Eak or whether the clerk requested that she do so. Respondent testified before the DEC that the clerk had indicated that Judge Eak would like to see her: "[T]his should be stressed in that I was invited to the court and it was not a

question of me say, barging in, demanding the court's attention and disrupting the court in session, which I feel would deserve more of a penalty than the way this matter proceeded" (1T19-20).[1] Later that day, respondent appeared in Judge Eak's courtroom, clad in jeans and a sweatshirt. When asked by the DEC to explain her attire on that date, respondent stated:

> Yes. I guess the foremost reason was that this was approximately a week after my arrest and I was still recuperating from what, to me, was a traumatic experience and although I was working I was kind of under a doctor's care to rest and that my clothing, the way I was dressed, was because I was resting and that, although I was going to court, my appearance was -- it was not a formal kind of motion hearing or appearance of that nature and that really the request that I was making to be relieved for medical and professional reasons was so -- here I was, not really able to carry on with the normal lawyer's business day, so that although I of course, thought that, yes, I am going to court and I should be dressed as an attorney.
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> [1T30]

Noticing respondent in the courtroom, Judge Eak asked who she was, still unaware that she was an attorney. After her identity was explained to him, Judge Eak advised respondent of the correct procedures to follow under the court rules to withdraw as counsel. He also informed her that he was in the middle of a trial and asked her to leave the courtroom. After an initial refusal, respondent left the courtroom. Judge Eak took a brief recess and saw respondent at the violations window. Respondent told Judge Eak that she had to speak with him in chambers or alone. He advised her that all discussions had to take place in the courtroom. Respondent re-entered the courtroom. Judge Eak called her to

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[1] 1T refers to the transcript of the DEC hearing on February 18, 1992.

sidebar and, again, tried to explain that she had to make the appropriate motion under the rules. He then repeatedly asked her to leave because she was interrupting his trial (her interruptions included pacing in front of the judge's bench during the trial.) Respondent refused to leave. Judge Eak took a recess, hoping respondent would leave. During that time, the attorneys appearing in the matter before Judge Eak suggested that she leave, as did the defendant in the case. While the court was in recess, Judge Eak telephoned the assignment judge, the Honorable Eugene D. Serpentelli, A.J.S.C., at home, to request guidance in this situation. The trial resumed and respondent reluctantly sat down after Judge Eak told her that he had called Judge Serpentelli. While Judge Eak was delivering his findings in the other matter, Judge Serpentelli returned his call. The court was recessed while Judge Eak took the call. He then returned to the bench and completed his findings. After the courtroom was emptied, Judge Eak again spoke with respondent. He explained the relevant rule to her and explained that Judge Serpentelli had agreed with the course of action that he had suggested. Judge Eak then gave respondent the following options: 1. respondent would withdraw from the case by leave of the court after notice to all parties; 2. respondent would find another attorney to substitute for her; or 3. Judge Eak would recuse himself from the case and/or send the case to another town (3T24-25). Judge Eak then asked respondent, on three occasions, to leave the courtroom. She refused. Judge Eak ordered her twice to leave. When respondent refused, Judge Eak had her

escorted out of the courtroom by a Brick Town patrolman, Officer John Talty. Respondent struggled against Officer Talty, apparently grabbing onto the pews, as she was being led from the room. Once out of the courtroom, she attempted to re-enter. Officer Talty was forced to bolt the door, on which respondent continued to pound (2T33, 76).[2]

Respondent denied resisting Officer Talty and explained that she was attempting to get away because he was hurting her arm (1T25). She also denied trying to re-enter the courtroom.

Exhibit C-3, the transcript of the proceedings on that date, sets forth respondent's language and behavior while before Judge Eak. A reading of that transcript reveals that Judge Eak did all he could to assist respondent with her request. He informed her that she had used the wrong terminology in her letter and suggested that she find someone else to take over the case. Respondent announced that she could not. Judge Eak warned her that, for her own protection from a possible ethics charge, she should comply with the rules. Apparently, the sticky point was respondent's refusal to notify her client, a requirement under the rule. Respondent kept insisting that Judge Eak relieve her as counsel, despite his protestations that he could not do so unless she followed the proper procedure. Judge Eak stated, "I believe the Rules require that you have to give notice to your client and I don't see your client here and I don't believe notice has been

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[2] 2T refers to the transcript of a June 20, 1991 proceeding in which respondent and Officer Talty were parties (Exhibit C-4).

given. I just can't release you." Respondent replied, "The Rules don't apply in my situation. It's not that I want to notify the client." (3T15).[3]

The following is an example of respondent's demeanor before Judge Eak:

> THE COURT: Counsel, please. Would you please go I can't hear your matter now. Send me a notice on the motion. I believe the Rules are clear. Please comply with the Rules. I'll do anything --
>
> [RESPONDENT]: I don't believe that I should have to do that.
>
> THE COURT: All right. Well then -- that's a business decision and an ethical decision that you have to make counsel. I can't make that for you. Okay?
>
> [RESPONDENT]: Why are you putting me through all the embarrassment of having to do this?
>
> THE COURT: I'm not -- Counsel, please go sit down. Please go sit down. I don't know what -- I'm trying to accommodate you. I don't know what else I can do. I believe the Rules are clear that you have to give notice to your client to be relieved as counsel. Now if I'm mistaken on that, get the Rule Book and show me where -- I'll tell you what. Give me authority to show me that I can just relieve you as counsel without notice to the client and I'll be happy to do that. I don't know what else I can do for you.
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> [RESPONDENT]: I don't believe that I should have to notify the client because it's not the client's business what happened.
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> THE COURT: Well why don't you just get another attorney to substitute in?
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> [RESPONDENT]: Because I don't believe that I should bear that responsibility.
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> THE COURT: Well who should?

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[3] 3T refers to the transcript of respondent's appearance before Judge Eak on April 16, 1991 (Exhibit C-3).

[RESPONDENT]: Why should anybody? Why can't you just relieve me?

THE COURT: Well then what happens --

[RESPONDENT]: Why make me do it? How can you make me go through this? I mean it's embarrassing.

THE COURT: Counsel, you came in here. I didn't invite you in here. You came in here.

[RESPONDENT]: You practically invited me. The Court Clerk called me and said you can come down and talk to the judge.

THE COURT: You wrote a letter.

[RESPONDENT]: Yes.

THE COURT: We instructed you on what to do. You're here. You asked to be relieved as counsel. First you asked to be substituted as counsel. Substitution of counsel is not the right terminology since you don't have somebody to substitute in. You want to be relieved as counsel and you have to follow the Rules. All right? Now please --

[RESPONDENT]: What happened to the Rules when I was arrested?

THE COURT: Counsel, please have a seat. No, don't -- step back. Please have a seat.

[RESPONDENT]: Well what's going to happen?

THE COURT: I'm going to do nothing on this. I'm going to continue with my trial. Please have a seat.

[RESPONDENT]: Well what's going to happen after that?

THE COURT: Counsel, I want to advise you, would you please sit down before I have to -- just please sit down.

[RESPONDENT]: Well what's going to happen? Are you going to hear --

THE COURT: You're going to go get the Rule Book and you're going to look at the way that you can get out of this thing and I'll be happy to accommodate you. Please go sit down, counsel.

[RESPONDENT]: I'm not going to read the Rule Book.

THE COURT: Well then go sit down.

[RESPONDENT]: [Indiscernible].

THE COURT: Counsel, I'm going to start my trial. Please sit down. Now I'm warning you, otherwise I'm going to find you in contempt of this Court, contempt of the face of the Court. You are familiar with in re Yengo [phonetic]? Sit down, counsel.

[RESPONDENT]: It's the same kind of threat. I mean you threatened me [sic] to arrest me when I was already arrested.

THE COURT: Please sit down, counsel. Please sit down, counsel.

[RESPONDENT]: I'm not going to sit down.
[3T17-20]

Officer Talty charged respondent with a violation of N.J.S.A. 2C:29-1, obstruction of justice. Respondent subsequently charged Officer Talty with a violation of N.J.S.A. 2C:29-1 and N.J.S.A. 2C-12-1(a), assault. On June 20, 1991, the matters were heard at a consolidated hearing before the Honorable Samuel M. Morris, then acting Municipal Court Judge. The charges against Officer Talty were dismissed. Respondent was convicted of the disorderly persons offense of obstructing the administration of law or other governmental function, a violation of N.J.S.A. 2C:29-1 of the New Jersey criminal code. A fine was also imposed. That statute reads as follows:

> A person commits an offense if he purposely obstructs, impairs or perverts the administration of law or other governmental function or prevents or attempts to prevent a public servant from lawfully performing an official function by means of intimidation, force, violence or physical interference or obstacle, or by means of any independently unlawful act. This section does not apply to flight by a person charged with crime,

> refusal to submit to arrest, failure to perform a legal duty other than an official duty, or any other means of avoiding compliance with law without affirmative interference with governmental functions.
>
> An offense under this section is a crime of the fourth degree if the actor obstructs the detection or investigation of a crime or the prosecution of a person for a crime, otherwise it is a disorderly persons offense.

The DEC found that, despite respondent's conviction of a violation of N.J.S.A. 2C:29-1, she had not violated RPC 8.4(b). Noting that respondent had been convicted of a disorderly persons offense, the DEC found that this conviction, "although quasi criminal in nature, does not meet the criteria of the aforementioned RPC" (Panel Report at 6). The DEC found a violation of RPC 3.5(c).

CONCLUSION AND RECOMMENDATION

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

The Board cannot agree, however, with the DEC's conclusion that respondent did not violate RPC 8.4(b). The Board disagrees with the latter finding. Despite the fact that respondent's conviction was that of a disorderly persons offense, it was still a conviction under the criminal code. It is clear that respondent's criminal act adversely reflected on her fitness to practice law. It is also clear that the fact that respondent's offense was a disorderly persons offense does not diminish its

magnitude, or the need for the imposition of discipline. Respondent was given every opportunity to mitigate her conduct before Judge Eak. She refused to sit down when asked and refused to leave the court. Although her language was not obscene or vulgar, she displayed an absolute disregard – worse, defiance – for Judge Eak's instructions. When he directed her to read the court rule pertaining to motions for withdrawal, she adamantly refused to do so, declaring, "I'm not going to read the Rule Book" (3T19). The fact that she appeared before Judge Eak improperly attired also revealed a total lack of understanding and respect for the dignity of the court proceeding.

Another troubling aspect of this matter was respondent's absolute lack of concern for the well-being of her client. She had no reservations about leaving him without counsel approximately one week before the trial. Apparently, she did not even believe that he needed to be notified that he had been left without representation. Judge Eak asked respondent if there was someone else who could take over the case and she replied that there was not. Respondent informed Judge Eak, "[the client] don't [sic] even know if he wants to have a lawyer. Maybe the whole thing will - - you know, he won't even ask for a lawyer (indiscernible)" (3T12).

In her answer (Exhibit R-1), respondent apologized for her deportment of April 16, 1991. She blamed her demeanor in large part on her "youth and enthusiasm in achieving what [she] perceived to be justice at the time." She gave the same explanation to the DEC (1T16). When asked what her interpretation of justice was at

that time, respondent answered, "[t]hat my request should have been answered, granted" (1T35). Respondent did not explain how withdrawing from a case without notice to her client and in violation of the court rules could ever be perceived as justice.

Respondent submitted a letter-brief to the Board setting forth three "factual points which are not apparent from the District's Report." Her first point was that the court was able to continue with the business at hand because as she "neared the end of [her] argument," she sat down when asked. Second, respondent argued that any disruption of the court by her was unintentional and, therefore, not intended to disrupt a tribunal, as contemplated in RPC 3.5(c). Finally, respondent contended that there was a "reasonable chance" that the requested relief could have been granted. In her answer and before the DEC, respondent offered in mitigation the fact that the underlying case against her client was dismissed, explaining that, had she obtained the sought-after relief from the court, "no one else would have been injured by it and that in some way the committee would see this as a substantiation of the reasonableness of [her] request" (1T29). The ultimate outcome of the underlying case, however, is irrelevant to her contemptible behavior toward Judge Eak. Respondent believed that she was entitled to have Judge Eak grant her request the instant that she made it, despite the fact that he had a trial in another matter before him and despite the fact that her request was clearly in violation of the court rules. Respondent attempted to justify her behavior as follows:

> Judge Eak, as [the presenter] stated, did ask me to make my request pursuant to the court rules and I felt that this was not something that I needed to do. I felt that in view of the way my arrest was handled and subsequent dismissal of my case that it would be prudent for Judge Eak to hear me out on why I wanted to be relieved of [sic] counsel and grant my request without the formal motion being made and the requisite notification to my client; I did not feel that my client really needed to know why I was being asked to be relieved, that it was really more a matter between the court and myself and that the court had some responsibility, as I saw it, to assist me in being relieved outside of the normal channel for requesting such relief.
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> [1T22]

Respondent also testified as to the toll her prior arrest had taken on her (1T18). While some degree of distress may be understood, respondent's "performance" before Judge Eak was nearly one week after her arrest. With regard to why she refused to leave the courtroom and follow Judge Eak's instructions on how to proceed, respondent testified:

> ...I felt that if I were to leave my matter would not be taken care of because I felt still that my position was reasonable, that I should not have to make a motion to require the relief I requested and that if I did leave really nothing would come of my request on the court's part.
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> [1T24]

See also 2T47. When asked again why she did not follow Judge Eak's instructions to file the appropriate motion and leave the courtroom, respondent replied, "[b]ecause I didn't feel that I should be burdened with making the formal motion and the requisite notice to my client" (1T33). Asked if there was a reason why she had not appealed Judge Eak's decision, respondent explained:

> Yes. Basically because I wanted to keep the matter within Brick Municipal. Much of my motivation for making the request to be relieved was to keep as contained as I

> possibly could the fact I was arrested. I didn't feel that my matter was really a concern of the assignment judge and I thought that Judge Eak really, in his purview, it was his responsibility to make this decision in view of the fact that my arrest matter had come before him.
>
> [1T32]

Respondent has not demonstrated any good reason why her request to withdraw had to be granted on the spot. She admitted that nothing motivated her conduct but the fact that she wanted an answer that night (2T53-54). She added that the fact that her client's trial was approximately one week later was "kind of a secondary reason why [she] was pushing for a sort of an informal resolution of this" (1T24).

Although respondent's misconduct did not occur in the course of a trial in which she was representing a party, her behavior interrupted a criminal trial to the extent that even the defendant in that matter asked that she sit down. The attorney defending Officer Talty against the charges brought by respondent characterized her as "a little self indulgent brat" (2T86). It is obvious that respondent has a good deal to learn about her role as an attorney, decorum and respect for the courts and the judicial system.

In the past, similar misconduct has resulted in discipline ranging from a private reprimand to a term of suspension. An attorney was privately reprimanded for improper conduct during the course of litigation, while acting as counsel for one of the parties and for referring to his adversary as a "low life pretending to be a lawyer [who] apparently has caught the ear of

this court and I am thoroughly disgusted." In imposing only a private reprimand, the Board considered that no prior disciplinary infractions had been sustained against the attorney since his admission to the bar twenty years earlier. What makes this respondent's conduct more egregious than that attorney's is the fact that her behavior took place in open court, in front of uninvolved parties, including attorneys and the defendant in an unrelated criminal matter, and that it was directed at the court.

A public reprimand has been imposed in several other cases where attorneys did not demonstrate the proper respect due the court and the judicial system. See In re Mezzacca, 67 N.J. 387 (1975) (where the attorney referred to a departmental review committee as a "kangaroo court" and made other discourteous comments. He had no previous discipline and might have become personally involved in his client's cause); 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 was retired from the practice of law at the time of discipline, had no history of ethics infractions and did not injure any party by his misconduct); In re Yengo, 92 N.J. 9 (1983) (where the attorney absented himself from two days of a five-week trial without prior notice to the court. Mitigating factors included Yengo's age, his failing health, his wife's precarious health and his imminent withdrawal from the practice of law) and In re McAlevy, 69 N.J. 349 (1976) (where the attorney physically attacked opposing counsel. In mitigation, he had no disciplinary record and

expressed regret at his actions. McAlevy received a three-month suspension in 1983 for discourteous conduct toward a judge and an adversary. In re McAlevy, 94 N.J. 201 (1983)). See also In re Geist, 110 N.J. 1 (1988).

The Court has also imposed a period of suspension for similar misconduct, albeit more serious. In re Vincenti, 92 N.J. 591 (1983). In that case, a one-year suspension was imposed based upon 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." Id. at 602. Two years later, Vincenti engaged in similar misconduct, for which he received a three-month suspension. In re Vincenti, 114 N.J. 275 (1989). See also In re Grenell, 127 N.J. 116 (1992) (where a two-year suspension was imposed for outrageous conduct before several tribunals, including the disciplinary authorities).

Although respondent's misconduct was not as egregious as Grenell's and Vincenti's, it was, nonetheless serious and injurious to the proper administration of justice. In the Board's view, although it is possible that respondent's behavior might have been attributable, in some measure, to youth and inexperience, it was so defiant and outrageous that it warrants no less than a public reprimand. The Board unanimously so recommends. The Board also

recommends that respondent practice under the guidance of a proctor for a period of two years. Three members did not participate.

The Board further recommends that respondent be required to reimburse the Ethics Financial Committee for administrative costs.

Dated: 2/28/94 By: Raymond R. Trombadore

Raymond R. Trombadore
Chair
Disciplinary Review Board