

SUPREME COURT OF NEW JERSEY  
Disciplinary Review Board  
Docket No. DRB 08-344  
District Docket No. VB-05-0033E

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IN THE MATTER OF  
JOEL S. ZIEGLER  
AN ATTORNEY AT LAW

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Decision

Argued: January 15, 2009

Decided: April 16, 2009

Marsha A. Papanek appeared on behalf of the District VB Ethics Committee.

Respondent appeared pro se.

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

This matter was previously before us on a recommendation for an admonition filed by the District VB Ethics Committee ("DEC"), which we determined to bring on for oral argument. The four-count complaint charged respondent with violating RPC 3.2 (failure to treat with courtesy and consideration all persons involved in the legal process), RPC 4.2 (communicating about the subject of the representation with a person the lawyer knows or should know to be represented by another lawyer), RPC 4.4(a) (in

representing a client, using means that have no substantial purpose other than to embarrass, delay, or burden a third person), RPC 8.4(d) (conduct prejudicial to the administration of justice), and RPC 8.4(g) (engaging, in a professional capacity, in conduct involving discrimination because of race, color, religion . . . national origin . . . where the conduct is intended to or likely to cause harm). We determine that a reprimand is the appropriate discipline for this respondent.

Respondent was admitted to the New Jersey bar in 1966. He maintains a law office in Maplewood, New Jersey. He has no history of discipline. The New Jersey Lawyers' Fund for Client Protection report shows that he was ineligible to practice law for fifteen months (from September 2006 to December 2007) and has been ineligible to practice law since September 29, 2008.

For the most part, the pertinent facts are not in dispute. The charges of misconduct stemmed from a comment that respondent made to his client's wife, after a hearing in the parties' contentious domestic relations matter, as well as statements that respondent made in a letter to his adversary.

Grievant Anu Upadhyay (Anu), an Indian national, testified at the DEC hearing that, following the court hearing in her domestic relations matter, she and her attorney, Barbara Worth,

heard some heavy steps trying to . . . catch up with us. It was very quiet around that

time, nobody was there. When the steps came we looked back. Then when I looked up it was Mr. Ziegler standing. We stood there. He came and Mr. Ziegler . . . looked at me and he said, ". . . I'm going to cut you up into bits and pieces, put you [into] a box and send you to India and your parents won't recognize you."

[T47-16 to 25.]<sup>1</sup>

According to Anu, at that time, respondent was only three feet away from her and was very angry; "[h]is face was red, flushed". The confrontation caused Anu to shake and cry. Worth put her arms around Anu and told respondent, "I didn't expect this from you".

At the ethics hearing, the parties stipulated to Worth's testimony, given at an August 21, 2003 Elizabeth Municipal Court matter, about the same incident. Worth's testimony corroborated Anu's testimony, with little variation. Worth recalled that respondent had stated, "I'll have you cut up into little pieces, or little bits and pieces, put in a box and sent back to India, or wherever it is that you came from." Worth recalled that Anu began to cry. Worth told respondent that she had nothing to say to him at the time, put her arm around Anu, and escorted her out of the building.

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<sup>1</sup> T refers to the transcript of the July 19, 2007 DEC hearing.

To put respondent's statement in context and to explain the profound impact it had on Anu, the presenter elicited testimony from Anu about her relationship with her ex-husband.

Anu was born and educated in India, where she received a medical degree. In March 1998, one month after her arranged marriage to Himanshu Sharma, she and Sharma came to the United States. He, too, was from India, but had already obtained American citizenship. They resided in Union, New Jersey. According to Anu, for the most part Sharma ignored her.

Anu and Sharma had a "very distant" relationship. Sharma went to Florida, from 1998 to August/September 1999, to start up a business. Later, in February 1999, Anu joined Sharma in Florida, while she was in the later stages of her pregnancy. Anu testified that, during and after her pregnancy, Sharma abused her verbally and physically by shaking her, hitting her, pulling her hair, throwing things at her, and burning her with cigarettes. She claimed further that, once their son was born, Sharma had little tolerance for him. He often became angry with the child and physically and verbally abused the child as well.

At one point, Sharma called the police to accuse Anu of domestic violence. He threatened that, if she said anything to the police, he would have their son placed in foster care. The police arrested Anu. That same evening, Sharma posted bail for

Anu's release, but would not permit her back into their house. Anu was forced to enlist the aid of Sharma's elderly friend, "Boe," because she knew of no one else to help her. Sharma had custody of their son.

The week following the incident, Sharma obtained a temporary restraining order against Anu. Shortly thereafter, Anu borrowed money from an acquaintance to retain Worth. In September 2001, Worth moved for emergent relief, seeking to obtain primary residential custody of the child for Anu. At the October 2001 motion hearing, the court concluded that there was insufficient evidence for emergent relief and instructed Worth to "file a motion for reconsideration at another date." The court awarded Anu \$98 per week for child support (she continued to live with Boe) and vacated the temporary restraining order against her.

Immediately following the hearing, Anu "was totally broken." She was upset, "very sad," and worried about the welfare of her child. It was just after that hearing, while they were still in the courthouse, that the incident with respondent occurred.

Later, in a letter to Worth, dated October 30, 2001, respondent wrote:

As usual, your client is lying through her teeth and I intend to prove it and to have

her punished for contempt for perjuring herself under oath.

My client is sick and tired of these lies and we are going to vigorously prove to the Court that your client is an unmitigated liar. There is no way that we will give up custody so I suggest that you prepare yourself for a "Battle Royale." If it turns out that your client has been abusing her son, in order to attempt to curry favor with the doctors or the court, then I will seek an emergency Order terminating her joint custody.

Your failure to furnish me with an explanation as to why I did not receive your Answering papers will leave me with no alternative but to file a Complaint with the Ethics Committee. I trust you will take the contents of this letter very seriously and advise your client accordingly.

[Ex.C3.]

Anu testified that, when she saw that letter, she suffered a blow to her self-esteem. She believed that respondent was trying to influence Worth to withdraw from her case "by challenging her and to intimidate her." At an unspecified date, Worth stopped representing Anu and returned Anu's entire retainer, purportedly because she knew about Anu's dire financial circumstances. Thereafter, Anu was forced to proceed with a legal aid attorney.<sup>2</sup>

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<sup>2</sup> Until Anu was able to obtain a medical residency, in 2003, she worked at a Burger King and at her son's day care center.

After discussing respondent's comments with acquaintances, Anu decided to file municipal court criminal charges against him. The court dismissed the charges against respondent, determining that Anu had filed charges in the wrong venue; the matter belonged before an ethics committee.<sup>3</sup>

At the DEC hearing, Anu testified that, during the criminal hearing and during each encounter with respondent, she re-lived the same feelings she had experienced when respondent had first made the comments to her; she felt intimidated, anxious, threatened, and very uncomfortable. She added that she continues to have flashbacks about the incident with respondent; she sees his angry face and recalls his threatening remarks. She stated: "It makes me feel very scared, even now, when I think of the whole thing." When she encounters respondent, it also brings back bad memories of Sharma's threats.

Anu conceded that, after the incident, she had limited direct contact with respondent, during which he made no derogatory comments to her about her national origin.

As the result of the domestic violence she endured, Anu underwent counseling.

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<sup>3</sup> Anu had filed an earlier grievance against respondent, but the DEC would not consider it while her divorce matter was pending. She re-filed it after her divorce was granted.

For his part, respondent accused Anu of having filed, presumably in the domestic relations matter, a skewed certification that was vicious and self-serving, accusing Sharma "of everything under the sun, except being a pedophile." Respondent characterized the matrimonial proceedings as "a knock down, drag out, vicious, credibility oriented issue between two people who had an arranged marriage. [sic] Who, obviously, probably hated each other from the day they got married."

According to respondent, the entire incident took no more than half a minute. He recalled that he was approximately six or seven feet away from Anu that his exact words to her were: "'You should be ashamed of yourself. You should be cut up into little pieces and sent back to India,' period." He denied saying that he would cut her up or that he would have her cut up in little pieces and put her "in a box," and that "her parents wouldn't recognize her."

Respondent conceded that "[i]t may have been an intemperate thing to say at the time," but that it shook him "to the core" that she had made derogatory and nasty comments about her husband. He reacted in the heat of the moment. He denied any intentions to harass or intimidate her. He claimed that his comments were an emotional outburst and a "manifestation of



[his] frustration [at] her appalling behavior." He thought that his comment might make her stop lying.

At the municipal court hearing, respondent testified that his statement was intended to "dissuade [Anu] from filing any more false, fraudulent, misleading, scurrilous certifications." Yet, at the DEC hearing, he did not recall proffering that excuse. Respondent stated that, since his comment, Anu has "embarked on a one woman crusade against me. She brought criminal charges against me and brought an Ethics case against me."

Respondent explained that he sent the letter to Worth because she had not provided him with Anu's answers and counter-claim. In addition, he believed that Anu was a liar and that his letter represented nothing more than "aggressive advocacy." He speculated that Worth returned Anu's retainer because she saw Anu "for what she really was. Maybe she wasn't the type of person that she wanted to represent." He admitted that he had telephoned Anu's legal aid attorney, once Anu began her medical residency. He did not think that Anu should be represented by legal aid, once she was able to pay for representation. Respondent added that Sharma insisted that he notify legal aid about Anu's changed financial circumstances. The legal aid attorney opted to finish the case, nevertheless.

Respondent urged us to consider his otherwise unblemished legal career of forty-one years and the fact that he is "an upstanding, outstanding member of [his] community."

The DEC noted that Sharma and Anu had been involved in a highly contentious divorce matter that included custody litigation and companion domestic violence complaints. It found that respondent's comment was made with the "purpose to influence the content of her future Certifications in a matrimonial action," at a time when she had been adjudicated a victim of domestic violence.

The DEC, thus, found that respondent violated RPC 3.2 (treating with courtesy and consideration all persons involved in the legal process) and that, regardless of his intent for making the comment, "there was no excuse for him to treat [Anu] as he did."

The DEC also found that respondent violated RPC 8.4(d) (conduct prejudicial to the administration of justice) because respondent's statements were designed to affect Anu's future conduct in her underlying matrimonial litigation. The DEC found the conduct particularly prejudicial to a victim of domestic violence, involved in a highly contested matrimonial action.

On the other hand, the DEC found no violation of RPC 4.2 (prohibiting counsel from speaking to an adverse litigant

knowing that the party is represented by counsel) because respondent did not speak to Anu about the subject of the litigation or make any attempt to elicit from her information about the matrimonial matters. Nor did the DEC find that respondent violated RPC 4.4(a) (using methods against third persons to embarrass, delay or burden third persons), given that respondent's comments were directed to Anu, a party, and not a third person.

Similarly, the DEC found no violation of RPC 8.4(g) (conduct by an attorney that involves discrimination because of race, color or national origin), reasoning that respondent's comment about sending Anu back to India had not been made for a discriminatory purpose.

As to respondent's October 30, 2001 letter to Worth, alleging threats about future litigation and accusing Anu of being a liar, the DEC did not find that it constituted "overreaching" or rose to the level of unethical conduct, even though it "somewhat" crossed the line of advocacy.

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

The DEC was correct in its determination that RPC 4.2, RPC 4.4(a), and RPC 8.4(g) were not violated. RPC 4.2 is inapplicable because respondent did not discuss the domestic relations case with Anu but, rather, made an outrageous and inappropriate comment to her. The statement was particularly egregious because of her history as an abused wife. RPC 4.4(a), too, is inapplicable. It addresses an attorney's conduct with respect to a third person; Anu was a party to the proceedings. Finally, because the inappropriate remark about sending Anu to India was not intended to cause harm based on her national origin, there was no violation of RPC 8.4(g).

At the municipal court hearing, respondent testified that he had made the statement to Anu with the intent to "dissuade" her from filing more false and scurrilous certifications. In addition, respondent's letter to Worth accused Anu of being an "unmitigated liar" and suggested that, if Anu, not his client, was abusing her son in an attempt to "curry favor with the doctors or the court," he would take action to obtain an emergent order to terminate her joint custody. Respondent advised Worth to take the letter's contents "very seriously," and threatened to file ethics charges against her. Respondent also recommended to Worth that she "advise" Anu accordingly.

We find, that the letter, in its aggregate, crossed the line of "aggressive advocacy." Respondent's threats of a "Battle Royale" and of filing ethics charges against Worth were intended solely to intimidate Worth and Anu and to affect the course of the litigation. Worth's withdrawal from the case and her return of Anu's retainer, notwithstanding her claim that she withdrew because of Anu's dire financial circumstances, coupled with respondent's telephone call to Anu's legal aid attorney to try to have the attorney withdraw from the case, further support this finding. We, therefore, conclude that respondent's letter violated RPC 8.4(d) (conduct prejudiced to the administration of justice).

Respondent's conduct also violated RPC 3.2 (failure to treat with courtesy and consideration all persons involved in the legal process). That his comments might have been made in the heat of the moment is no excuse. Furthermore, his threatening letter to Worth was written after he had sufficient time for reflection. Therefore, his explanation about "the heat of the moment" merits no consideration.

The only issue left for determination is the proper quantum of discipline. Attorneys who have displayed discourteous conduct toward persons involved in the legal process have received admonitions or reprimands. See, e.g., In re Gahles, 182 N.J. 311

(2005) (admonition for attorney who, during oral argument in a matrimonial motion, made rude and degrading statements about an opposing party - her client's wife (she called her a "con artist," "crazy," a "liar" and a "fraud;" other comments were "this is a person who cries out to be assaulted" and "somebody has to, like put her in jail or put her in the loony bin"); the statements may have been made with the dual purpose of acquainting the new judge assigned to the matter with the allegedly obstreperous and harmful conduct the wife exhibited during the lengthy divorce proceeding and, advancing her client's interests; the attorney had a prior reprimand);<sup>4</sup> In the Matter of Alfred Sanderson, DRB 01-412 (February 11, 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 . . . . 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

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<sup>4</sup> We voted to impose a reprimand, but the Court downgraded the discipline to an admonition.

should even occur to you."); In the Matter of John J. Novak, DRB 96-094 (May 21, 1996) (admonition imposed on attorney who engaged in a verbal exchange with a judge's secretary; the attorney stipulated that the exchange involved "loud, verbally aggressive, improper and obnoxious language" on his part); In re Geller, 177 N.J. 505 (2003) (reprimand imposed on attorney who filed baseless motions accusing judges of bias against him, failed to expedite litigation and to treat with courtesy judges, his adversary, the opposing party, an unrelated litigant, and a court-appointed custody evaluator, 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 unprofessional and demeaning remarks toward the other party and opposing counsel, and made a discriminatory remark about a judge; in mitigation, the attorney's conduct occurred in the course of his own child custody case); In re Milita, 177 N.J. 1 (2003) (reprimand for attorney who wrote an insulting letter to his client's former paramour -- the complaining witness in a criminal matter involving the client; he accused her of giving false information about his client to the county prosecutor's office; an aggravating factor was the attorney's prior six-month

suspension for misconduct in criminal pre-trial negotiations and for his deceitful method for obtaining information to assist a client);<sup>5</sup> and In re Stanley, 102 N.J. 244 (1986) (reprimand for attorney who engaged in shouting and other discourteous behavior toward the court in three cases; in mitigation, the attorney was retired from the practice of law at the time of discipline, had no disciplinary record, and did not injure anyone by his conduct).

Based on the above precedent, we find that respondent's conduct falls within the admonition-to-reprimand range of discipline. Unlike Stanley (reprimand for improper behavior towards the court in three matters), respondent's misconduct involved a comment leveled against his client's spouse, not the court, and a threatening letter to his adversary. Like Gahles (admonition) and Milita (reprimand), the improper comments were made about the client's spouse/paramour. Unlike respondent, both Gahles and Milita had disciplinary histories: Gahles a reprimand, Milita a six-month suspension.

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<sup>5</sup> Although we voted to impose a three-month suspension, the Court reduced the discipline to a reprimand and dismissed our findings of violations of RPC 4.4(a) (using means that have no purpose other than to embarrass a third person) and RPC 8.4(d) (conduct prejudicial to the administration of justice), finding only a violation of RPC 3.2 (treating with courtesy and consideration all persons involved in the legal process).



We have considered that respondent has no ethics history in his forty-three years at the bar; that he recognized that his comment was intemperate; and that the misconduct occurred approximately seven years ago. Nevertheless, we were immensely troubled by respondent's comments to Anu. Moreover, we find that respondent's letter to Worth exceeded the bounds of zealous advocacy, particularly because respondent had sufficient time to reflect on the incident and on his prior "intemperate comments." We, therefore, determine that respondent's letter was a blatant attempt to affect the course of the litigation by threatening and intimidating Worth to depart from her duties as an advocate.

We are mindful of precedent, however, and have considered that, in Gahles and Milita, the Court downgraded the discipline that we voted to impose. Were it not for this consideration, we would have imposed greater discipline. Under these circumstances, we determine that a reprimand is adequate discipline for respondent's actions.

Members Boylan, Baugh, Clark, and Lolla did not participate.

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

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SUPREME COURT OF NEW JERSEY  
DISCIPLINARY REVIEW BOARD  
VOTING RECORD

In the Matter of Joel S. Ziegler  
Docket No. DRB 08-344

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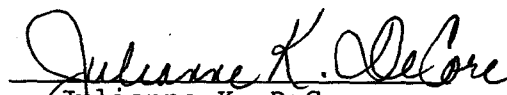
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Argued: January 15, 2009

Decided: April 16, 2009

Disposition: Reprimand

Members	Disbar	Suspension	Reprimand	Dismiss	Disqualified	Did not participate
Pashman			X			
Frost			X			
Baugh						X
Boylan						X
Clark						X
Doremus			X			
Lolla						X
Stanton			X			
Wissinger			X			
Total:			5			4

  
Julianne K. DeCore  
Chief Counsel