SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 05-269
District Docket No. XIV-03-262E
and VII-05-901E

IN THE MATTER OF	
THOMAS D. WILLIAMSON	
AN ATTORNEY AT LAW	

Decision

Argued: November 17, 2005

Decided: December 22, 2005

Janice Richter appeared on behalf of the Office of Attorney Ethics.

Respondent appeared pro se.

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

The complaint charged respondent with violating RPC 3.4(a) (unlawfully obstruct another party's access to evidence or unlawfully alter, destroy or conceal a document or other material having potential evidentiary value, or counsel or assist another to do so), RPC 3.4(b) (falsify evidence, counsel or assist a witness to testify falsely, or offer an inducement to a witness that is prohibited by law), and RPC 3.4(f) (request a person other than a client to refrain from voluntarily giving relevant information to another party).

Respondent was admitted to the New Jersey bar in 1976. He has no disciplinary history.

The facts in this matter are not in dispute. The disciplinary charges stem from a letter that respondent wrote on behalf of his wife, Kathleen Bennett,[1] whom he represented in a civil proceeding. Beginning in the fall of 1998, Bennett, a registered nurse, provided in-home nursing care to a two-year old girl who suffered from cerebral palsy, severe brain damage, asthma, and other afflictions. Her condition required that she

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[1] Bennett's name also appears in the record as Kathleen Bennett-Williamson.

receive chest physiotherapy, or arrhythmic tapping of the chest and back to clear mucous in the lungs.

In the spring of 1999, the child's parents became suspicious about Bennett's care and installed a hidden surveillance camera in their daughter's bedroom. On June 15, 1999, the girl's father heard loud noises coming from the girl's bedroom, telephoned the police, and showed the videotape to a detective responding to the call. The detective arranged for Dr. Elizabeth Hodgson, a pediatric specialist employed by the Central Jersey Child Protection Center, to view the videotape. Dr. Hodgson, along with a social worker, Sylvie Eisenberg, prepared a report stating that Bennett's "treatment" of the girl was an assault and was "in NO WAY reflective of normal nursing practices or chest physical therapy." After discussing the case with Dr. Hodgson, the detective filed criminal complaints against Bennett.

On October 26, 1999, a Middlesex County grand jury indicted Bennett on charges of second-degree and third-degree aggravated assault and second-degree endangering the welfare of a child. The jury viewed the videotape and heard testimony from an expert called by the state, a pediatric nurse, who concluded that Bennett's striking of the girl's head and face was not acceptable nursing practice.

On February 16, 2001, a jury acquitted Bennett of the two aggravated assault charges, but found her guilty of the lesser-included disorderly persons offense of simple assault and of endangering the welfare of a child. On March 25, 2003, the Appellate Division reversed the child endangerment conviction, finding that the jury could have inferred that Dr. Hodgson, a child abuse specialist, had advised the detective that there was a sufficient basis to prosecute Bennett. Based on this hearsay, the Appellate Division reversed the endangering conviction and remanded the matter for a new trial, but affirmed the simple assault conviction. In December 2004, Bennett was acquitted of the child endangerment charge at the second trial.

In the meantime, on June 18, 2001, respondent, as attorney for Bennett, filed a civil complaint against Hodgson and Eisenberg (the authors of the report), the Central Jersey Child Protection Center, and five unnamed "John Doe" defendants. Respondent filed the civil complaint while Bennett was awaiting sentencing, following her initial conviction. According to respondent, he filed the complaint at that time because the two-year statute of limitations was about to expire. Although the civil complaint does not allege a specific cause of action, it asserts that the report "contains numerous misstatements of fact

and erroneous conclusion [sic] based on the misstatements of facts," that Bennett was arrested on the basis of the report, that she was fired because of the arrest, and that the New Jersey Board of Nursing suspended her license based on the indictment. The complaint sought damages for injuries suffered through the defendants' wrongful acts.

At some point, the complaint was dismissed for failure to file an affidavit of merit. On September 11, 2003, the Appellate Division reversed the dismissal and remanded the matter for further proceedings, concluding that a jury could determine the issues without the assistance of an expert.

Following the remand, the defendants filed a summary judgment motion, arguing that the criminal assault conviction was the law of the case, that the complaint failed to state a cause of action, and that the defendants enjoyed statutory immunity. The trial judge granted the motion and the Appellate Division affirmed that decision on November 19, 2004. In its decision, the Appellate Division observed:

> As we see it, the videotape at issue now has been viewed not only by the present defendants, but also by the grand jury, the State's expert testifying at the criminal trial, the jury at that trial (which convicted Bennett of assault), by us on appeal from Bennett's criminal convictions,

> by the motion judge granting dismissal of Bennett's action for failure to file an affidavit of merit, and by us on this present appeal. None of the persons viewing the tape expressed any doubt that at least one of the blows to the head that Bennett now contests took place. Thus, defendants' interpretation of what the video depicted — the sole issue in this case — is fully corroborated.
>
> In these circumstances, we find that Bennett's unsupported and idiosyncratic interpretation of what the video presents is insufficient to raise a factual issue that would avoid summary judgment under the standards established by Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 540 (1995). When that which appears on the tape is universally regarded as clear, then something more than a mere denial is required for summary judgment to be defeated. Martin v. Rutgers Cas. Ins. Co., 346 N.J. Super. 320, 323 (App. Div. 2002) (a party's "self-serving assertion" is insufficient to create a question of material fact to defeat summary judgment). Here, a denial is all that has been offered.
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> [Ex.11 at 6 to 7 (footnote omitted).]

On April 29, 2005, the Supreme Court denied Bennett's petition for certification of the Appellate Division decision affirming the summary judgment order.

Michael McGann was the attorney who represented Dr. Hodgson, Eisenberg, and the Central Jersey Child Protection Center in the civil action. On March 28, 2003, respondent sent

to McGann the letter that forms the basis for these disciplinary charges. Respondent sent that letter shortly after the Appellate Division had reversed and remanded the child endangerment conviction and while the Middlesex County Prosecutor's Office was in the process of determining whether to re-try Bennett. In this letter to McGann, respondent asserted:

> The situation as to Ms. Bennett has evolved, to where it appears to me, that your clients might be in a dammed [sic] if they do and dammed [sic] if they don't position.
>
> Accompanying this letter, you will find, a copy of Appellate Division decision in State of New Jersey v. Kathleen Bennett-Williamson. The Appellate Division affirmed the simple assault charge, but the much more serious, second degree, charge of endangering the welfare of a child charge has been reversed.
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> In that it was the report of Dr. Hodgson and Sylvie Eisenberg that start [sic] the ball rolling, it is my thought, that if they disavowed their report, and they took active steps to discourage the re-trial, they might influence the Middlesex County Prosecutor to decide not to re-try Ms. Bennett. This would take a tremendous weight off of Ms. Bennett's shoulders, both physically, mentally and emotionally.
>
> If the Appellate Division should grant my appeal in our matter, the disavowing of their report would be tantamount to admitting liability. The plus is, that you would be able to argue their actions in mitigation of damages. On the other hand, if

> no steps are taken to discourage the Middlesex County Prosecutor from deciding not to re-try, I would try to argue the failure as a factor in determining damages.
>
> [Ex.6.]

On April 1, 2003, McGann replied that his clients had no intention of disavowing their report and that they had no reason to do so. McGann testified about his reaction to respondent's letter:

> Mr. Williamson asked if my clients could disavow their report. And I took disavow to mean just say I renege the whole report.
>
> And it seemed to me it was asking me to do that to gain some advantage in the civil matter. Because he goes on in the second paragraph to say that if — if I had my clients disavow their report it would be admitting liability. But then that would help my clients, because then that could be used in mitigation of damages.
>
> And I took that to mean that perhaps then, when we tried the case, I could tell the jury, well, listen. My clients realize that they made a mistake, and we disavowed the report, and, therefore, be gentle on us when you award damages.
>
> And I thought that was tantamount to almost criminal action, because he was asking my clients, basically, to — to lie. Because he also says, and if they took active steps to discourage the retrial.
>
> And I also felt that was — I don't know if "extortion" is the right word, but that they

> wanted my clients to contact the prosecutor's office and tell them not to retry Ms. Bennett. And to me that was borderline criminal, is what I thought.
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> [T43-14 to T44-13.][2]

McGann provided the Middlesex County Prosecutor's Office with a copy of the letter. On April 7, 2003, First Assistant Prosecutor William F. Lamb reported respondent's conduct to the Office of Attorney Ethics.

McGann's clients did not change their position about the contents of their report. McGann testified that both Hodgson and Eisenberg "remained steadfast" in the opinions expressed in the report.

Respondent conceded that, at the time that he wrote the letter to McGann, he had no indication that either Hodgson or Eisenberg believed that their report was wrong. He contended, however, that he believed that the Hodgson-Eisenberg report contained false statements of fact and that he was not asking those individuals to testify falsely, but to testify truthfully, in accordance with his views. At the ethics hearing, he defended his March 28, 2003 letter:

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[2] T refers to the transcript of the July 11, 2005 hearing before the DEC.

> At the – the time that the criminal matter was reversed and remanded, I contacted Mr. McGann about his client's acknowledging the mistakes that were within the [report] so that they could proceed to act with the Middlesex County Prosecutor to, hopefully, help the prosecutor's office reach an informed decision as to whether to proceed with the retrial.
>
> There was no attempt to have Dr. Hodgson or Ms. Eisenberg testify to lie . . . . This was an attempt to have Dr. Hodgson and Ms. Eisenberg correct their mistake and eliminate the retrial. Their failure, if this ever does get to a civil trial, is a legitimate issue for a jury to determine as to punitive damages. And as such the letter was proper.
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> [T77-5 to T78-5.]

On June 29, 2005, shortly before the July 11, 2005 ethics hearing, the DEC panel chair issued subpoenas, at respondent's request, to Dr. Hodgson and Eisenberg. On July 7, 2005, the panel chair granted McGann's motion to quash the subpoenas, determining that the testimony of those witnesses was not relevant to whether respondent's conduct was unethical. Moreover, at the ethics hearing, respondent proposed that the panel view the videotape so that the panel could see that the Hodgson-Eisenberg report contained "clear mistakes." The panel chair denied respondent's request, determining that the issue was not relevant.

The DEC found that respondent violated RPC 3.4(b), by offering an inducement to a witness that is prohibited by law, and RPC 3.4(f), by requesting a person to refrain from voluntarily giving relevant information to another party:

> The panel concludes that Respondent's March 28, 2003 letter violated RPC 3.4(b) because, without having any basis to believe that either Dr. Hodgson or Ms. Eisenberg believed that the Report contained any erroneous information, Respondent tried to induce Dr. Hodgson and Ms. Eisenberg to disavow their Report and take active steps to discourage the re-trial of Ms. Bennett-Williamson on the endangerment charge. If they refused to take those actions, Respondent threatened to argue for punitive damages against them in the civil trial. Respondent was not simply asking the witnesses to reconsider their Report (and apparently never did so either informally or through a deposition examination) but rather was asking them to accept, and report to the Prosecutor, his version of the facts for the purpose of minimizing the potential for damages against them on the civil suit.
>
> The panel finds the violation of RPC 3.4(f) because Respondent, in his letter, clearly urges Dr. Hodgson and Ms. Eisenberg to disavow their report, and thus, refrain from giving relevant information to the Prosecutor. Whether or not Respondent agreed with the contents of the Report, Dr. Hodgson and Ms. Eisenberg had not disavowed any part of their Report, and had never indicated it would be appropriate to disavow any part of their Report. Therefore, the Report, as

written, would be relevant to the Prosecutor's decision.

[HPR at 5.][3]

The DEC declined to find a violation of RPC 3.4(a) or that portion of RPC 3.4(b) prohibiting an attorney from falsifying evidence or counseling or assisting a witness to testify falsely.

The DEC recommended a reprimand.

Following a de novo review of the record, we are satisfied that the DEC's finding that respondent's conduct was unethical is supported by clear and convincing evidence. We find, however, that RPC 8.4(d) (conduct prejudicial to the administration of justice), rather than the charged violations, is applicable to respondent's conduct.

After Bennett was arrested, charged, and convicted of criminal offenses, respondent, her husband, filed a civil lawsuit against Dr. Hodgson and Eisenberg. At the request of the police department, those individuals viewed the videotape of Bennett's interaction with the young girl and prepared a report opining that Bennett had abused the child. Although the cause of

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[3] HPR refers to the hearing panel report dated July 27, 2005.

action in the civil complaint that respondent filed is not well-articulated, it appears to be based on his fervent belief that the Hodgson-Eisenberg report contained mistakes and that Bennett was not guilty of abuse, assault, or other improper conduct. Presumably, the theory of the lawsuit was that Bennett was arrested due to the police department's reliance on the erroneous report, and that the authors of the report should be held responsible for the resultant negative consequences, such as Bennett's conviction and the suspension or revocation of her nurse's license.

It is against this background that we assess respondent's conduct. At the time that he sent the March 28, 2003 letter to McGann, the first dismissal of the civil lawsuit was on appeal, the assault conviction had been affirmed, and the prosecutor's office was considering whether to retry Bennett on the child endangerment charge. Respondent admitted that he wished to convince Hodgson and Eisenberg to retract their report so that the prosecutor's office would determine not to retry Bennett. He conceded that, at that time he wrote the letter, and up to the date of the ethics hearing, he had no indication that Hodgson or Eisenberg were willing to retract the statements in the report.

Respondent reviewed the videotape of his wife's actions and strongly believed that the Hodgson-Eisenberg report contained

inaccuracies. If respondent had merely tried to persuade Dr. Hodgson and Eisenberg to reconsider their report and to admit that, perhaps they were mistaken, his conduct might not have risen to the level of an ethics violation. If he truly believed that the videotape exonerated his client, he should have contacted the prosecutor's office to present his position. In our view, however, respondent exceeded the bounds of advocacy when he made threats in his letter to McGann. Respondent threatened to argue, in the civil lawsuit, that the failure of McGann's clients to discourage the prosecutor's office from retrying Bennett justified increased damages. Although the argument is not fully articulated in the letter, apparently respondent would contend in the civil action that McGann's clients had failed to mitigate their damages by not telling the prosecutor the truth (as respondent viewed the truth) about Bennett's conduct. Respondent, thus, attempted, albeit unsuccessfully, to coerce potential witnesses to retract information previously given to law enforcement authorities. This conduct was prejudicial to the administration of justice.

Although respondent was not specifically charged with a violation of RPC 8.4(d), the facts in the complaint gave him sufficient notice of the alleged improper conduct and of the

potential violation of that RPC. Furthermore, the record developed below contains clear and convincing evidence of a violation of RPC 8.4(d). Respondent did not object to the admission of such evidence in the record. In light of the foregoing, we deemed the complaint amended to conform to the proofs. R. 4:9-2; In re Logan, 70 N.J. 222, 232 (1976).

The charged RPC violations do not appear to apply to the facts in this matter. The DEC correctly dismissed the charge that respondent violated RPC 3.4(a). Respondent did not unlawfully obstruct another party's access to evidence, unlawfully alter, destroy, or conceal a document, or counsel or assist another to do so. The only "document" at issue was the Hodgson-Eisenberg report. Although respondent tried to convince the authors to retract it, he did not counsel them to alter, destroy, or conceal it.

It is arguable that respondent's conduct violated that portion of RPC 3.4(b) prohibiting attorneys from counseling or assisting a witness to testify falsely. Respondent attempted to persuade Dr. Hodgson and Eisenberg to retract their report. If they had done so, it is possible that respondent would have called them as witnesses at Bennett's retrial, where, presumably, they would testify that they were mistaken when they

indicated that Bennett had committed child abuse. The record does not indicate whether either Dr. Hodgson or Eisenberg actually testified at the second criminal trial. Thus, there is no clear and convincing evidence that Hodgson and Eisenberg were witnesses. At most, they were potential witnesses.

RPC 3.4(b) more properly applies to attorneys who contact witnesses directly and advise them to give false testimony. See, e.g., In re Giorgi, 180 N.J. 525 (2004). In that case, the attorney misrepresented to his adversary, insurance defense counsel, that if the insurance company would increase its offer, he would reduce his fee by $25,000. In the Matter of John N. Giorgi, Docket No. 04-082 (DRB May 19, 2004) (slip op. at 5). After they reached a settlement, in part based on the insurance company's belief that respondent had reduced his fee, the insurance company's attorney required that the settlement be placed on the record. Id. at 6. Giorgi then instructed his client to testify falsely that Giorgi had reduced his fee, and the client so testified. Ibid. Here, respondent contacted McGann, not the potential witnesses, and asked him to prevail on his clients to accept respondent's view, that is, to "come clean" and admit that their report was erroneous. We would be required to engage in speculation to find that respondent

advised witnesses to testify falsely. Thus, we find that a violation of RPC 3.4(b) was not proven to a clear and convincing standard.

RPC 3.4(f) prohibits an attorney from requesting a person, other than a client, to refrain from voluntarily giving relevant information to another party. Here, Hodgson and Eisenberg had already given information to the police, and, indirectly, to the prosecutor's office. Respondent did not ask them to refrain from voluntarily giving information. Rather, he suggested to their attorney that they retract the opinions contained in their report. Therefore, RPC 3.4(f) is not applicable.

Also not applicable is RPC 3.4(g) (present, participate in presenting, or threaten to present criminal charges to obtain an improper advantage in a civil matter). Although the complaint did not charge respondent with violating RPC 3.4(g), his actions bear some resemblance to the conduct proscribed by that rule. Respondent made threats to obtain an advantage in a civil matter. He did not, however, threaten to present criminal charges. Rather, he threatened to seek enhanced damages in a civil action. Thus, respondent did not violate the specific provisions of RPC 3.4(g).

In summary, respondent engaged in conduct prejudicial to the administration of justice by threatening to seek enhanced damages in a civil proceeding in order to persuade potential expert witnesses to recant a report in which they had concluded that respondent's client had assaulted a severely disabled child.

A review of relevant case law reveals similar, but not identical, misconduct.

In In re Milita, 177 N.J. 1 (2003), the attorney represented a defendant who pleaded guilty to criminal restraint. Before his client was sentenced, the attorney sent a letter to the complaining witness, his client's former paramour, in which he insulted her and stated, "[s]hould you find it within yourself to attempt to right the wrong you have perpetrated upon my client, you might even wish to contact the county prosecutor's office to provide a true statement of what actually occurred." In the Matter of Vincent J. Milita, II, Docket No. 02-314 (DRB February 6, 2003) (slip op. at 3). According to the attorney, his intent was to "goad [the victim] into coming forward with what [he] legitimately perceived to be the truth . . . ." Id. at 5. The judge in the criminal proceeding testified that the letter represented an inappropriate attempt to affect the outcome of the

case. Ibid. The Court determined that respondent violated RPC 3.2 (failure to treat with courtesy and consideration all persons involved in the legal process) and imposed a reprimand.

We find similarities between Milita's and respondent's conduct. Both wrote letters to attempt to persuade individuals to contact the prosecutor's office, retract their prior version of events, and provide a different account in accordance with the attorney's view of the truth. Although, unlike respondent, Milita did not threaten the victim with negative consequences, he included insulting and demeaning language in the letter. Milita's disciplinary history included a six-month suspension for conduct prejudicial to the administration of justice and conduct involving deceit and misrepresentation.

The Court imposed a reprimand on the attorney in In re Alcantara, 144 N.J. 257 (1995). In that case, the attorney improperly contacted criminal co-defendants, who had negotiated plea agreements requiring them to testify against the attorney's client, and advised them not to testify. Id. at 261. Alcantara contacted the parties, although he knew that they were represented by other counsel. Id. at 266. The Court determined that the attorney's conduct violated RPC 3.4(c) (knowingly disobey an obligation under the rules of a tribunal), RPC 3.4(f)

(request a person, other than a client, to refrain from voluntarily giving relevant information to another party), RPC 4.2 (communicate with co-defendants who were represented by other attorneys), RPC 8.4(a) (violate the Rules of Professional Conduct), and RPC 8.4(d) (engage in conduct prejudicial to the administration of justice). Id. at 267. Noting that this case represented its first interpretation and application of RPC 4.2, the Court cautioned the bar, however, that future violations of that rule would ordinarily result in suspensions. Id. at 268.

In In re Sage, 121 N.J. 239 (1989), the attorney was retained to represent a client who had sustained personal injuries in an automobile accident. In the Matter of Ronald Sage, Docket No. 88-044 (DRB November 7, 1989) (slip op. at 1). The attorney obtained an expert report from the orthopedic surgeon who had treated his client. Id. at 2. The expert report mentioned that the attorney's client had sustained a prior injury. Ibid. By letter, the attorney asked the surgeon to remove references to the pre-existing injury from his expert report. Id. at 2-3.

After noting, as an aggravating factor, the attorney's prior private reprimand, we determined that a reprimand was the appropriate sanction for his attempt to conceal material having

potential evidentiary value, a violation of RPC 3.4(a). Id. at 5. The Court agreed and imposed a reprimand.

In Sage, the attorney had not yet provided his adversary with the expert report, when he asked the doctor to revise it by removing references to the pre-existing injury. In the present case, all parties in both the civil and criminal proceedings had received the original report. Respondent, thus, did not attempt to conceal material having potential evidentiary value.

Here, in mitigation, we consider that respondent was emotionally involved in the case because he was representing his wife. He appears to have been motivated, not by venality, but by a desperate belief in the righteousness of his position. The Appellate Division remarked that, despite the fact that numerous people had observed the videotape and concluded that Bennett had delivered at least one blow to the child's head, Bennett's interpretation of the videotape was "unsupported and idiosyncratic." That comment appears to apply equally to respondent. Another mitigating factor is respondent's previous unblemished career of almost thirty years.

Based on the foregoing, we determine that a reprimand is the appropriate sanction in this matter. Members Boylan and

Holmes voted for an admonition. Chair Maudsley and Vice-Chair O'Shaughnessy did not participate.

We further require respondent to reimburse the Disciplinary Oversight Committee for administrative costs.

Disciplinary Review Board
Louis Pashman, Esq.

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

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Thomas D. Williamson
Docket No. DRB 05-269

Argued: November 17, 2005

Decided: December 22, 2005

Disposition: Reprimand

Members	Suspension	Reprimand	Admonition	Disqualified	Did not participate
Maudsley					X
O'Shaughnessy					X
Boylan			X		
Holmes			X		
Lolla		X			
Neuwirth		X			
Pashman		X			
Stanton		X			
Wissinger		X			
Total:		5	2		2

By Julianne K. DeCore
Chief Counsel