

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 05-197
District Docket No. VB-03-001E

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

:
:
:
:
:
:
:

Decision

Argued: July 21, 2005

Decided: September 1, 2005

Gary A. Carlson 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 before us on a recommendation for discipline (reprimand) filed by the District VB Ethics Committee ("DEC"). The complaint charged respondent with a violation of RPC 1.16(c) (failing to continue representation when ordered to do so by a tribunal, notwithstanding good cause for terminating the representation).

Respondent was admitted to the New Jersey bar in 1966. He maintains a law practice in Maplewood, New Jersey. He has no history of discipline.

This matter concerns respondent's failure to abide by a judge's denial of his motions to be relieved as counsel and his failure to be prepared for the scheduled trial in a criminal matter.

For the most part, the facts are not in dispute. Respondent admitted most of the allegations in the complaint. Respondent, a sole practitioner, had been practicing law for almost thirty-nine years at the time of the DEC hearing. Approximately ninety percent of his practice involved matrimonial matters, some municipal court matters ("DWI, shop-lifting, assault and battery, and domestic violence"), "closings, sales and purchases," and collection work. Respondent claimed that he had never tried a criminal matter other than in municipal court, which he characterized as being "quasi criminal."

In June or July 2002, respondent was retained by the family of Kent Wise, a/k/a Yise, to represent him in a criminal matter stemming from a charge of second-degree robbery. There was no retainer agreement for the representation. Respondent had known the Wise family for many years and had represented Kent's parents on a number of occasions.

According to respondent, Kent was a drug addict, who had been arrested in April 2002 for using a box cutter to rob a store. Initially, the Union County Public Defender's Office represented Kent. Respondent claimed that the Wises became dissatisfied with those services and wanted a "real lawyer." The Wises paid respondent \$500 to obtain a reduction of Kent's bail. Despite respondent's efforts, he was unsuccessful in doing so. Kent was, nevertheless, released from prison when someone posted bail.

Thereafter, Kent paid respondent \$300 to negotiate a plea bargain that would not result in his incarceration. Respondent unsuccessfully attempted to negotiate a plea for drug rehabilitation, rather than a custodial sentence. The final plea offer, "5 w/ 85%," meant that Kent would be required to serve eighty-five percent of a five-year sentence. Kent refused to accept the plea agreement, proclaiming his innocence. Respondent, too, believed that the sanction was too harsh.

Respondent contended that Kent could not afford to pay him an additional fee to represent him at trial. As a result, Kent decided to have a public defender resume his representation.

Although respondent tried to be relieved as counsel, the Honorable James C. Heimlich, J.S.C., denied his request and ordered him to appear at Kent's trial. Respondent appeared in

court unprepared, prompting the judge to issue an order to show cause why respondent should not be held in contempt of court. Judge Heimlich's "affidavit" had attached to it a statement setting forth the chronology of events in the matter. It states, in relevant part:

On July 22, 2002, Brian McCormack, Assistant Public Defender represented the Defendant [Wise] at his first Pre Trial [sic] Conference (PTC). Beginning in September however, Mr. Ziegler began representing the Defendant as follows: (1) on September 6, 2002, at a Bail Hearing, (2) on September 9, 2002, and September 23, 2002, at PTCs preparing paperwork relating the Defendant's drug habit and continuing plea negotiations, (3) on September 30, 2002, at PTC continuing plea negotiations, (4) on October 7, 2002, Mr. Ziegler executed a trial memorandum for the trial date of November 18, 2002, the matter was listed for trial with Mr. Ziegler listed as counsel of record representing the Defendant.

On November 18, 2002 Mr. Ziegler filed a Motion to be relieved of [sic] counsel because the Defendant could not afford the fees. Mr. Ziegler also informed the Court that he did not have the Defendant's files and the State had not provided certain discovery materials. The Court denied the motion and noted that when Mr. Ziegler signed the Pre-Trial Memorandum, he stated (1) that discovery was complete, (2) there were no outstanding issues and (3) he was ready to proceed with the trial. The case was then re-listed for trial on December 2, 2002.

However, on December 2, 2002, Mr. Ziegler, [sic] notified the Court that he was not prepared to proceed with the trial because he still had not retrieved the Defendant's files and he did not receive

certain discovery materials. The Court noted that this case would not be adjourned and instructed Ziegler to be ready to proceed with the trial on December 4, 2002.

On December 4, 2002, Mr. Ziegler still was not ready to proceed with the trial and again sought to be relieved of [sic] counsel. The Court found that Mr. Ziegler's behavior was inappropriate. The Court noted that pursuant to the court rules a trial on the trial list is required to proceed on that day. Additionally, the Court noted that Mr. Ziegler represented the Defendant at the Bail Motion Hearing, several PTCs and Plea Negotiations. Further, when Mr. Ziegler signed the Pre-Trial Memorandum he was aware that the matter was listed for trial requiring him to review the discovery materials and to interview the witnesses.

Thus, the Court found that Mr. Ziegler's claims that he was unaware when he signed the Pre-Trial Memorandum that he would actually be required to proceed with the trial is disingenuous and insincere. Therefore, the Court found Mr. Ziegler's behavior contemptible and fined him \$250.00 to be paid in one week by December 11, 2002.

[Ex.P4 at 3-4.]

At the DEC hearing, respondent attributed his lack of preparedness for trial to not having Kent's file in his possession. The file purportedly contained discovery that the Public Defender's Office had obtained and given to respondent prior to Kent's bail hearing. Although respondent maintained that Kent's file was never returned to him, he had copies of some of the discovery contained therein at the DEC hearing -- what exactly is not known. Respondent reasoned that he must have

retained a copy of part of the file for himself. He contended, however, that he did not have the discovery; when he appeared in court, he "had nothing."

At the DEC hearing, respondent maintained that he had been hired for a limited purpose (bail reduction and plea bargain) and that his motion certification set out his reasons for seeking to be relieved as counsel:

2. I was hired by defendant to attempt a bail reduction.

3. I also attempted to plea-bargain the case without success. I did sign the trial memo on defendant's behalf. Defendant is not working and resides with his parents. The Union County Public Defender's Office originally represented defendant and are [sic] fully familiar with case. I spoke to Brian McCormick, Esq. on November 18, 2002 and November 25, 2002 and he is prepared to take over the trial. I was specifically hired for a limited purpose as I was aware that defendant had great financial hardships in that he was in jail since April and had two minor children. Defendant himself informed the Court of this fact when in Court on November 18, 2002. Relieving the undersigned as attorney should in no way cause a disruption of the trial calendar as all discovery is complete.

4. This case was schedule [sic] for trial on Monday, November 18, 2002. Prior to that date I was discharged as his attorney due to the fact that he could not afford to pay for legal fees to be incurred in representing him. It was agreed that at that time he would seek the services of a Public Defender to represent him in this matter. At that time, I turned over my entire file to him so

he could present same to the Public Defendant [sic] assigned to represent him.

[Ex.P2.]

Respondent added that, at the time he signed the trial memorandum, the Public Defender's Office was "willing and able to take over" Kent's defense and did so after the final plea offer was made. In addition, respondent testified that Kent's wife was dissatisfied with his services because of his failure to reduce the bail and to "get a good plea bargain," and did not want to pay him. She preferred representation by a public defender. Ultimately, Kent was represented by a public defender and was acquitted in March 2004, in a trial before another judge, in Union County.

Respondent recalled that Judge Heimlich had denied his motion to be relieved on the basis that his signing the October 7, 2002 trial memorandum precluded him from withdrawing from the case. Due to respondent's lack of familiarity with criminal matters, he did not realize that signing the trial memorandum would have that effect, and did not glean that restriction from the document.

According to respondent, "the judge kept telling him 'You have to try this case, you have to try this case, you have to try this case today, today, today, today,' was what he said." The judge inquired whether respondent had interviewed witnesses

in the case, to which respondent replied that he had not because he had not been hired to do so. According to respondent, the judge did not believe him and fined him \$250. Respondent added that the court never officially relieved him as Kent's counsel, notwithstanding his argument to the judge that the public defender was willing to take back the case.

Although respondent accepted responsibility for his conduct, he did not know what he had done wrong. He believed that the judge had taken a very inflexible position by refusing to postpone the matter and relieve him as counsel.

The DEC found that respondent violated RPC 1.16(c) by failing to represent Kent after being ordered to do so by the court. Because respondent signed the trial memorandum, listing him as counsel of record for purposes of trial, the DEC discounted his claim that he was retained only for the bail hearing and for the negotiation of a plea agreement. The DEC also relied on the court's reasoning for denying respondent's motion to be relieved as counsel: he had signed the pre-trial memorandum stating that discovery was complete, there were no outstanding issues, and he was ready to proceed with the trial.

After the court re-listed the case for trial on December 4, 2002, respondent again moved to be relieved on the basis that he was not prepared to proceed. In denying respondent's motion,

which was renewed at the hearing, the court found respondent's claim disingenuous and insincere, found him in contempt, and fined him \$250.

The DEC recommended that respondent be reprimanded. The DEC noted the existence of other potential violations, but realized that, even if the charges were tried independently, they would not warrant additional sanction.

Following a de novo review of the record, we are unable to agree with the conclusions of the DEC.

Absent a written retainer agreement, there is no evidence to refute respondent's argument that he was retained only to represent Kent at the bail hearing and to negotiate a plea. Because of respondent's lack of success in negotiating an acceptable plea agreement, Kent chose to go forward with a trial. Respondent signed the trial memorandum as Kent's "defense attorney" and was, therefore, the attorney of record.

Respondent's initial motion to be relieved as counsel was based on the fact that Kent was unable to pay him, that he did not have Kent's file, and that the State had not provided certain discovery materials. As noted above, the court denied respondent's motion because he was listed as trial counsel for the defendant in the trial memorandum. On December 2, 2002, respondent notified the court that he was not prepared to

proceed with the trial because he had not retrieved the defendant's files or certain discovery materials. The court, nevertheless, instructed respondent to be ready to proceed with the trial two days later, December 4, 2002. Respondent was not prepared for trial, and again moved to be relieved as counsel. The court found respondent's arguments in support of his motion "disingenuous and insincere," found him in contempt, and imposed a sanction against him.

Respondent contended that, because he was unfamiliar with criminal matters, he was not aware that signing the trial memorandum would preclude him from withdrawing from the case. Notwithstanding respondent's claim, Judge Heimlich denied his motion to be relieved as counsel and "instructed" him to be ready to proceed with the trial.

The complaint charged that by denying respondent's motion to be relieved as counsel the court "in effect" ordered respondent to continue representing Kent, including at trial, and that, therefore, respondent's refusal to prepare for trial and to represent Kent violated RPC 1.16(c). We find that, although technically respondent violated this rule, his conduct did not rise to a level requiring formal discipline.

To be sure, conduct similar to respondent's ordinarily leads to the imposition of a reprimand. In In re Frankfurt, 164

N.J. 596 (2000), the attorney was reprimanded for conduct in a matter that he accepted as a pool case from the Middlesex County Public Defender's Office. The attorney continually failed to appear in court for pre-trial conferences, thereby disobeying pre-trial orders and disregarding the rights of his client and adversary and duties toward the court. The attorney then obtained two continuances immediately before the trial was scheduled to begin. The judge extended a courtesy to respondent by allowing him to select the trial date. Shortly before the scheduled date, respondent notified the judge's office that he was unprepared for trial and would not be appearing. In persisting in his refusal to appear, the attorney became increasingly abusive to the case manager and the judge's secretary. He appeared only under threat of sanction and stated that he was unprepared because his private clients took precedence over Public Defender's Office cases. The attorney exhibited rude conduct toward the judge and her staff. The attorney also had a prior three-month suspension that was not considered in assessing discipline because it was imposed after the misconduct in the matter under consideration. See also In re Antonas, 157 N.J. 547 (1999) (reprimand for gross neglect and failure to appear in court on scheduled trial dates, resulting in contempt order); In re Hartmann, 142 N.J. 587 (1995)


(reprimand for intentionally and repeatedly ignoring court orders to pay opposing counsel a fee, resulting in a warrant for attorney's arrest, and for displaying discourteous and abusive conduct toward a judge, with intent to intimidate her); and In re Yengo, 92 N.J. 9 (1983) (reprimand following conviction for contempt based on persistent abuse of judicial process and lack of respect for the administration of justice; strong mitigating factors considered).

Respondent's conduct did not nearly approach the conduct exhibited in the above cases. Although it is true that he was ordered to appear for Kent's trial, we considered that (1) his involvement with the case was initially prompted by his desire to help Kent and his family, by attempting to obtain a bail reduction and, later, a plea bargain; (2) later, Kent no longer wanted respondent to represent him and turned his file over to the public defender; (3) respondent's unfamiliarity with criminal matters was evident from his lack of success with his prior attempts to assist Kent and from his unawareness that he could not be relieved from the case after signing the pre-trial memorandum; and (4) the public defender, who was familiar with Kent's case, was ready and willing to proceed in the matter; in fact, later, the public defender obtained a dismissal in the matter.

In light of the foregoing, we find that respondent's technical violation of RPC 1.6(c) was de minimis and not deserving of formal discipline. In our view, the complaint warrants dismissal. See, e.g., In re Capaci, N.J. (2004) (the Court dismissed the complaint, finding that the circumstances presented did not warrant the imposition of discipline).

Members Louis Pashman, Esq., Judge Reginald Stanton and Robert Holmes, Esq., did not participate.

Disciplinary Review Board
Mary J. Maudsley, Chair

By: 
Julianne K. DeCore
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

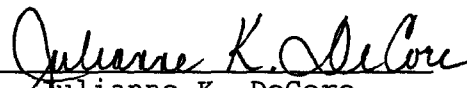
In the Matter of Joel S. Ziegler
Docket No. DRB 05-197

Argued: July 21, 2005

Decided: September 1, 2005

Disposition: Dismiss

Members	Disbar	Suspension	Reprimand	Dismiss	Disqualified	Did not participate
Maudsley				X		
O'Shaughnessy				X		
Boylan				X		
Holmes						X
Lolla				X		
Neuwirth				X		
Pashman						X
Stanton						X
Wissinger				X		
Total:				6		3


Julianne K. DeCore
Chief Counsel