SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 03-093

IN THE MATTER OF :
:
ERIC J. GOLDRING :
:
AN ATTORNEY AT LAW :

Decision

Argued: June 19, 2003

Decided: September 5, 2003

Guy Ryan 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 originally before us at our March 13, 2003, meeting as a post-hearing appeal by the Office of Attorney Ethics ("OAE"). We determined to grant the appeal and hear the matter as a presentment. Two matters were considered below by the DEC, both of which were dismissed. The OAE appealed the DEC's determination in only one of those matters, in which respondent had been charged with a violation of RPC 3.5 (impartiality and decorum toward the tribunal). Although the complaint did not

specify a subsection of the rule, both subsection (b) (prohibiting ex parte communication) and subsection (c) (prohibiting conduct intended to disrupt a tribunal) are applicable.

Respondent was admitted to the New Jersey bar in 1984, and maintains an office for the practice of law in Red Bank, Monmouth County. He has no history of public discipline. Respondent was, however, the subject of a diversion in 2001, for violation of RPC 1.9 and RPC 3.3. Respondent failed to reveal to a judge that he had been disqualified in a case for a conflict of interest. That case was essentially identical to the one then before the judge. Respondent's failure to disclose his disqualification demonstrated a lack of candor toward the tribunal.

This matter arose from a series of letters between respondent and the Honorable Clarkson S. Fisher, Jr., P.J.Ch. Respondent and the presenter entered into a stipulation of facts that set forth the dates and recipients of the letters in question and also discussed a number of letters to and from third parties. The stipulation, for the most part, did not address the content of the letters and respondent did not admit any misconduct.

According to respondent, the letters began because he was compelled to correct the record in a matter before Judge Fisher. Respondent initially contacted Judge Fisher by letter dated May 21, 2001, which was the first of six letters respondent sent to the court during a two-week period in May and June 2001. The subsequent letters discussed not only the matter under review on May 18th, Longette v. Crocker, but two additional matters as well. The letters contained factual and legal arguments in support of respondent's former client, as well as the following attacks on the court and counsel:

Obviously, to sit in Your Honor's courtroom and to listen to the blatant falsities being bandied about as if there was a modicum of truth thereto was, to say the least, most painful. I am deeply troubled by Your Honor's comments and inferences that Mr. Longette should have done nothing when, in fact, Your Honor is (or should be) painfully well aware that all Mr. Longette did was complain to Your Honor and Your Honor continued to take Mr. Bonney's misrepresentation after misrepresentation as being true.

[Exhibit J-1.]

....

What I found most troubling in that case was that while Your Honor was most vocal regarding my failure to disclose the prior Order (despite Charles Uliano, Esquire having full knowledge of same and giving his tacit - if not overt - approval of my involvement), Your Honor did not find Mr. Uliano at fault – or take any action against him. Mr. Uliano had the identical information that I did and did nothing but actively permitted Your Honor and myself to rely upon his silence; even affirmatively engaging my involvement by entering into a Consent Order with me and negotiating various matters. Your Honor was also aware that he utilized his silence to bring a well-timed Motion to Disqualify after my involvement in the matter had been well-established and my client's reliance upon my representation was instilled.

Your Honor again did nothing when Mr. Uliano engaged in even more troubling conduct when . . . as I immediately pointed out to this Court . . . he filed a knowingly false and meritless Certification with Your Honor accusing me of clearly unethical conduct (noting that the 'support' attached to the Certification actual [sic] confirmed the falsity thereof) and permitted his clients to also file 'questionable' certifications. . . . What I do know is that Your Honor did not 'advise' the District Ethics Committee regarding the very serious allegations raised by Mr. Uliano. I have long been troubled by the total inaction on that. Either I did something extremely wrong or Mr. Uliano filed a knowing false certification making extraordinary accusations against an attorney.

[Exhibit J-3.]

....

> As Your Honor and the relevant individuals are aware, I strongly objected to the blatantly false certification filed by Charles Uliano, Esquire accusing me of improper conduct. . . and Your Honor's failure to act in relation thereto. I am, most respectfully, at a loss as to how this information - which Your Honor well knows was previously provided and submitted to all counsel and was provided to you in the other *confidential* matter – now gives rise to further complaint. The information was fully briefed by me on September 1, 2000 and Your Honor never, to my knowledge, ruled on the motion to have me turnover [sic] funds (which, by the way, were not paid to me by Mr. Uliano's clients).
>
> [Exhibit J-6.]
>
> Mr. Gelson has made it clear that he does not wish to abide by Your Honor's instructions, but seeks instead to review far more than Your Honor has communicated he should. . . . I will not fully comment on Mr. Gelson's misguided accusations other than to deny them.
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> [Exhibit J-9.]

Respondent wrote the May 21st letter after a May 18, 2001, hearing before Judge Fisher on a motion for partial summary judgment in the case of Longette v. Crocker. Respondent had previously represented Longette and was present in the courtroom as an observer. Respondent explained in his letter that, during the proceeding, he became concerned that Judge Fisher had misstated events in the case and that counsel had left the record uncorrected. During the hearing, respondent approached Longette's counsel and advised him of what he deemed to be the correct information. It was respondent's understanding that counsel would then make a submission to the court. Respondent contended that under RPC 3.3 he was further obligated to advise the tribunal of the correct information. Thus, respondent wrote the May 21 letter to Judge Fisher that chronicled earlier events in the case. Exhibit J-1. Copies of the letter were sent to counsel of record in Longette v. Crocker, although the letter did not reference that fact.

Respondent intended for Judge Fisher to receive the letter after he had given his ruling on the summary judgment motion.

Judge Fisher wrote to respondent on a number of occasions, more than once expressing concern that it was inappropriate for respondent to communicate with him regarding the case. Judge Fisher cautioned respondent that his actions could be in violation of RPC 3.5.

In Judge Fisher's first letter to respondent, Exhibit J-2, he replied to a remark in respondent's May 21 letter by stating:

> Mr. Goldring suggests in his letter of May 21 that I previously admonished him for some earlier alleged violation by him of RPC 3.3. See, Goldring Letter (May 21, 2001) at page 6 ('If I am to be admonished by Your Honor for not being fully candid (regardless of the circumstances), then I will not place myself in the position of being admonished for silently sitting by why [sic] others do far worse'). I believe the record in the other matter obliquely referred to will reflect that I never admonished Mr. Goldring. Rather, I referred the matter to the appropriate ethics committee which took certain action.[1] There's a difference just as I am not admonishing Mr. Goldring herein, but merely advising the appropriate committee of these occurrences to take whatever action that committee may deem fit.

Judge Fisher also stated in his letter that he would leave it to counsel of record to consider if he should be disqualified from further involvement in the case. The letter was copied to counsel in the Longette matter and to the Honorable Lawrence M. Lawson, A.J.S.C.

One of the issues in the subsequent communication between respondent and Judge Fisher was respondent's contention that Judge Fisher had disclosed confidential

[1] The matter to which Judge Fisher referred is the above-mentioned agreement in lieu of discipline.

information in his May 22, 2001, letter about respondent's earlier disciplinary proceeding. Respondent did not copy the other attorneys on his letters because they referred to confidential matters. He did, however, on two occasions, advise counsel in writing that, although he had corresponded with the court, he did not view the contents of his letters to be appropriate for dissemination to counsel.

As the correspondence between respondent and Judge Fisher continued, several of the letters concerned, in part, Judge Fisher's instruction to respondent to give redacted copies of his letters to counsel in the underlying cases. Respondent countered with a request that the court show him what parts of the letters should be sent to which attorneys.

In his June 1, 2001, letter to respondent, during the flurry of correspondence, Judge Fisher suggested to respondent, "out of kindness and collegiality," that he consider the content of his letters, before sending them, since they may result from the contentious nature of the adversarial system. During the hearing below, respondent described the Judge's June 1, 2001, letter as "one of the most disingenuous things" he had ever read. T8/5/02 64.[2]

Ultimately, the plaintiff in the Longette matter moved to have Judge Fisher recuse himself. Longette was concerned that he would not receive a fair and impartial trial in

[2] The DEC called respondent's reaction to Judge Fisher's June 1, 2001, letter "particularly disturbing."

light of the court's conflict with respondent.[3] Although Judge Fisher denied the motion, he transferred the case to another judge.

The presenter argued below that the "venom" in respondent's letters, along with their factual and legal substance, indicated his intent to disrupt the tribunal.

Respondent argued to the contrary - that he had no intent to disrupt the tribunal. Rather, he was stating truthful information to the court. He conceded that the situation could have been better handled.

* * *

As summarized by the DEC, "the substance of the letters that respondent sent to Judge Fisher contained, in part, factual and legal argument in support of respondent's former client's case, although the letters primarily seemed to be an attack by respondent on the Court and other counsel involved in the case." In the DEC's view, respondent's actions "were overly and unnecessarily aggressive, at times juvenile and always taken without due consideration by respondent of the consequences." Further, the DEC concluded that respondent was disrespectful to the court and ignored the court's direction to stop writing the letters. The DEC could not conclude, however, that respondent intended to disrupt the tribunal. Rather, the DEC concluded: "respondent got carried away with his ego and his perceived cause. Respondent is guilty of poor judgment and unprofessional conduct but not of an ethical violation." The DEC dismissed the charges against respondent.

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[3] Longette also expressed concern about a previous professional relationship between opposing counsel and Judge Fisher.

The presenter attempted to appeal the determination of the DEC, but was advised that he lacked standing to do so. Thereafter, the OAE filed an appeal, relying on the presenter's argument for appeal.[4] Essentially, the presenter contended that the panel's decision was against the weight of the evidence, contrary to respondent's letters, and ignored the role of the courts and the hardship placed on the parties and Judge Fisher due to respondent's conduct. In the appeal, the OAE argued that not only did respondent violate RPC 3.5, as charged, but also RPC 8.4(d). Although the latter was not charged in the complaint, the OAE suggested that we consider the allegation on this record or remand the matter to the DEC for further exploration of a possible violation of RPC 8.4(d).

* * *

Upon a de novo review of the record, we are satisfied that it contains clear and convincing evidence that respondent was guilty of unethical conduct.

As to RPC 8.4(d), respondent was not charged with a violation of that rule, the language of the complaint did not give him sufficient notice of a possible charge in that regard, and the issue was not fully litigated below. We determined, therefore, not to consider the complaint amended to include a charge of a violation of RPC 8.4(d). In addition, we saw no need to remand the matter to the DEC to pursue this issue.

As to a violation of RPC 3.5(b), respondent argued that his communications were not ex parte, essentially because he was not representing any party to the dispute.

[4] In his reply to the notice of appeal, respondent questioned the timeliness of the appeal. We determined, however, at our March meeting to accept the appeal.

Respondent, however, had been counsel to a party in the dispute and was arguing facts to the benefit of his former client. Black's Law Dictionary defines ex parte as: "On one side only; by or for one party; done for, in behalf of, or on the application of, one party only." Although respondent was no longer counsel of record, he spoke for only one party and made argument in behalf of one party. Furthermore, he refused to provide redacted copies of his letters to counsel, when so directed by the court. Whether he intended at the time to violate RPC 3.5(b), his conduct was in violation of the rule.

With regard to RPC 3.5(c), as noted above, respondent advised substituted counsel for Longette of the alleged inaccurate information in the record. It was respondent's understanding that counsel would be communicating with the court on that issue. Respondent's obligations were fulfilled at that point. It is possible, however, that respondent believed that, under RPC 3.3, he was duty-bound to advise Judge Fisher of what he believed were misstatements of fact in the record. Keeping in mind that Longette was a friend and long-term client, we can understand his first letter. Given the relationship between Judge Fisher and respondent we can understand (although not condone) its tone. It is also possible that respondent was outraged by Judge Fisher's disclosure to third parties of not only the prior ethics proceeding against him, but that he would be filing a second grievance as well. Respondent's subsequent letter to Judge Fisher, under these circumstances, may be understandable, although again, we cannot condone it.

It is the later letters in the series that evidenced the more serious breaches of conduct. Respondent dragged two additional matters and several other attorneys into the

fray. When Judge Fisher told respondent to disseminate redacted versions of his letters to the appropriate parties and respondent asked for guidance in determining which portions should go to which attorneys, he was "out of bounds." At that point, despite respondent's contentions that he did not want to disseminate too much or too little information, he was clearly intentionally antagonistic toward the court. Respondent had to know, at that time, that his actions were disrupting the proceedings. Indeed, because of respondent's letters, Judge Fisher was compelled to transfer the case to another judge, thereby further delaying the case.

In the past, discipline for intimidating and contemptuous conduct to a court has ranged from a reprimand to disbarment. In In re Hartmann, 142 N.J. 587 (1995), a reprimand was imposed where the attorney intentionally and repeatedly ignored court orders to pay opposing counsel a fee and, in a separate case, engaged in discourteous and abusive conduct toward a judge in an attempt to intimidate the judge into hearing his client's matter that day. Similarly, a public reprimand resulted in In re Stanley, 102 N.J. 244 (1986), where an attorney engaged in shouting and other discourteous behavior toward the court in three separate cases. In mitigation, it was considered that Stanley was retired from the practice of law at the time of the discipline, had no history of ethics infractions, and did not injure any party by his conduct. A public reprimand was also imposed in In re McAlevy, 69 N.J. 349 (1976). McAlevy started a melee with opposing counsel in chambers. In mitigation, he had no disciplinary record and expressed regret

for his actions.[5] Similarly, in In re Mezzacca, 67 N.J. 387 (1975), a public reprimand was imposed where the attorney referred to a departmental review committee as a "kangaroo court" and made other discourteous comments. Mezzacca had no previous history of discipline and may have become personally involved in his client's cause. See also In re Lekas, 136 N.J. 515 (1994) (reprimand imposed where an attorney disrupted a municipal court trial and ignored the judge's repeated orders for her to sit down or leave the courtroom); In re DeMarco, 125 N.J. 1 (1991) (reprimand where the attorney was found guilty of two counts of contempt; he had two prior private reprimands) and In re Geist, 110 N.J. 1 (1988) (public reprimand for trial conduct that resulted in a finding of contempt against the attorney).

A one-year suspension was imposed in In re Vincenti, 92 N.J. 591 (1983), where the attorney made twenty-three separate 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 one more instance of similar misconduct, for which he received a three-month suspension. In re Vincenti, 114 N.J. 275 (1989). Subsequently, Vincenti received a one-year suspension for recordkeeping violations, negligent misappropriation and conduct intended to disrupt a tribunal. In re Vincenti, 147 N.J. 460 (1997). Ultimately Vincenti was disbarred for his use of "vile

[5] McAlevy later received a three-month suspension in 1983 for discourteous conduct toward a judge and an adversary. In re McAlevy, 94 N.J. 201 (1983).

tactics" in two matters and for lying to the OAE. In re Vincenti, 152 N.J. 253 (1998). See also In re Gaffney, 138 N.J. 86 (1994) (two-year suspension imposed on an attorney who, among other misconduct, baited a judge in open court by calling him a liar), and In re Grenell, 127 N.J. 116 (1992) (two-year suspension imposed for outrageous conduct before several tribunals, including disciplinary authorities).

This matter is most akin to Mezzaca, where the attorney was disrespectful and insulting to the tribunal, and to Lekas, where the attorney was so caught-up in a sense of urgency that she exhibited outrageous and disrespectful conduct to the court. Respondent's misconduct herein was aberrant, given that he has been a practitioner for almost twenty years and has two disciplinary infractions to date stemming from encounters with Judge Fisher. Respondent has since conceded that there was a better way to handle this situation and has apologized to Judge Fisher. A majority of our members determined to impose a reprimand. Three members dissented and would impose an admonition. One member recused himself.

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

Disciplinary Review Board
Mary J. Maudsley, Chair

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

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Eric J. Goldring
Docket No. DRB 03-093

Argued: June 19, 2003

Decided: September 5, 2003

Disposition: Reprimand

Members	*Disbar*	*Suspension*	*Reprimand*	*Admonition*	*Dismiss*	*Disqualified*	*Did not participate*
Maudsley			X				
O'Shaughnessy			X				
Boylan				X			
Holmes				X			
Lolla			X				
Pashman			X				
Schwartz				X			
Stanton							X
Wissinger			X				
Total:			5	3			1

Julianne K. DeCore
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Acting Chief Counsel