SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 03-419

IN THE MATTER OF

MARK L. BRECKER

AN ATTORNEY AT LAW

Decision

Argued: January 29,2004

Decided: March 31, 2004

Richard J. Engelhardt appeared on behalf of the Office of Attorney Ethics.

Respondent waived appearance for oral argument.

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

This matter was before us based on a motion for reciprocal discipline filed by the Office of Attorney Ethics ("OAE") following the imposition of discipline on respondent in New York.

Respondent was admitted to the New Jersey bar in 1977 and to the New York bar in 1975. He has no disciplinary history in New Jersey. According to the records of the New Jersey Lawyers' Fund for Client Protection, respondent has been ineligible to practice law in New Jersey since December 30, 1985.

On September 22, 2003, respondent was suspended for two years in New York, effective October 22, 2003, for violations of the Code of Professional Responsibility *DR* 1-102(a)(5) (a lawyer or law firm shall not engage in conduct that is prejudicial to the administration of justice; comparable to New Jersey *RPC* 8.4(d)) and *DR* 1-102(a)(7) (a lawyer or law firm shall not engage in any other conduct that adversely reflects on the lawyer's fitness as a lawyer; comparable to New Jersey *RPC* 8.4(b)). The two-count ethics complaint filed against respondent was based on a finding of contempt of court entered against him by a judge in one matter and his abusive conduct toward others in an unrelated matter.

On February 19, 1999, the Honorable Charles Edward Ramos, J.S.C., of the Supreme Court of the State of New York, County of New York, entered a decision and an order finding respondent in contempt of court. According to Justice Ramos' decision, respondent, who represented the defendant in commercial litigation, had arranged to take the depositions of two of the plaintiff's corporate officers on October 7, 1998. Respondent objected to the presence of one officer during the deposition of the other. The plaintiff's counsel contended that corporate officers were entitled to be present during the deposition. Respondent refused to permit the court

reporter to record the dispute. The plaintiff's attorney obtained a ruling from Justice Ramos that the corporate officer was permitted to be present during the deposition and that respondent's refusal to allow the court reporter to record the dispute was unprofessional. Justice Ramos' decision describes the following sequence of events:

> The Deposition resumed on October 8, 1998 and concluded on October 9, 1998. On October 9, 1998, Brecker had what appeared to be a mental breakdown. Brecker admits that he has certain "idiosyncrasies", however his conduct in the courtroom went beyond the pale of acceptable behavior. A transcript is not capable of recording Brecker's mannerism and tone of voice during the course of the few days this Court presided over this action. The extent of Brecker's departure from proper conduct is demonstrated by the fact that he went so far to actually dare this Court to hold him in contempt.
>
> This Court charitably attributed Brecker's contemptuous conduct to a momentary loss of composure. Therefore, instead of holding Brecker in contempt, the Court addressed the merits of the pending application. The issue then before the Court was the refusal by Brecker to complete even three hours of deposition testimony on October 9, 1998. Compounding the impact of Brecker's refusal to continue with the deposition was the fact that these individuals traveled from France at considerable expense to be present for three days of testimony. This Court ruled that Brecker's failure to continue with the deposition would result in the deposition being deemed completed and a preclusion from continuing the deposition in the future. A determination of this issue was to be the conclusion of this Court's involvement in this action as the matter was scheduled to return to the supervision of Justice Crane.
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> If Brecker felt the Court's decision to preclude was erroneous then he had the option to move to reargue or file an appeal with the Appellate Division . . . . Instead of filing an appeal, the very day Brecker represented that he did not have even one additional hour to take deposition testimony, he found sufficient time to write a disparaging letter to the Court.
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> In his letter of October 9, 1998, Brecker goes on to indicate that he was aggrieved that the court choose [sic] to accept his adversaries [sic] explanation of the parties [sic] earlier squabble and subsequent clashes between the attorneys in the deposition. The letter however went further to directly attack the Court by stating:

> When you heard that part of today's testimony wherein my adversary had clearly lost his cool, and then chose to ascribe this to me, it became clear that the truth does not have any significant status in your universe.

(Emphasis added) (December 2, 1998, T. at 203). How this letter was meant to benefit his client's case is puzzling, other than to conclude that he incorrectly thought to bully the court into revisiting its prior decision . . . .

Brecker as an Officer of the Court had a responsibility to act in a manner which did not tend to impair the respect due to the courts. Brecker choose [sic] to ignore his responsibilities both in the courtroom and in [] sending a letter to the Court containing a contemptuous diatribe.

Brecker also had an affirmative obligation not to "[e]ngage in conduct that is prejudicial to the administration of justice. (22 NYCRR §1200.3 ["DR 1-102"]). A violation of DR 1-102 may be premised upon any conduct which reflects adversely upon the legal profession and is not in accordance with the high standards imposed upon members of the bar . . . . The Court finds that Brecker's conduct was not in accordance with these principles and was prejudicial to the administration of justice. Therefore, this Court had no option other than to adjudicate Brecker in contempt as it did on December 2, 1998.

(Attachment 3, Exhibit 2, pp. 3-6 of the OAE's brief)

Justice Ramos determined that respondent's mental fitness was questionable and referred the matter to disciplinary authorities. The court further ordered respondent to take twenty hours of continuing legal education on (1) courtroom and deposition skills, and (2) his awareness of the need for appropriate professional behavior. In his decision, Justice Ramos referred to respondent's expression of remorse.

On April 9, 2002, Justice Ramos entered an order purging the contempt and vacating the contempt order of February 19, 1999. The court determined that respondent had satisfactorily apologized and demonstrated an understanding of, and remorse for, his misconduct.

In the second matter, on June 7, 1999, respondent telephoned a client, Peter Winter. Although he was told by Winter's employer, Axium Entertainment, that Winter was not present, respondent telephoned Axium Entertainment between sixty and seventy times during the next ninety minutes, demanding to speak to Winter. Respondent harassed Axium Entertainment staff, using crude, vulgar, and abusive language. Also in June 1999, respondent left messages containing vulgar and profane language on Axium Entertainment's answering machine.

About one year later, on June 29, 2000, respondent twice hung up the telephone on an attorney who was an associate of the court examiner in a guardianship proceeding in which respondent had an interest. On that same date, the attorney sent a letter to respondent advising him to contact his office only in writing. On July 6, 2000, respondent telephoned the attorney's office more than thirty times during a ninety-minute period, stopping only after the attorney called the police.

In 1996, respondent received an admonition in New York for (1) making numerous telephone calls to his adversary's office and either hanging up or making disparaging statements and (2) making numerous telephone calls to his doctor's office, thereby preventing that office from receiving any other telephone calls, and using abusive language toward the secretaries.

Respondent submitted the following mitigating factors at the disciplinary hearing in New York: (1) he served in the Peace Corp in Ethiopia from 1964 through 1966; (2) one-third of his work is *pro bono*; (3) he was admitted to the bar in 1975; and (4) four character witnesses testified to his reputation in the community for honesty.

The OAE urged us to impose a three-month suspension.

Reciprocal discipline proceedings in New Jersey are governed by *Rule* 1:20-14(a)(4), which provides as follows:

> The Board shall recommend the imposition of the identical action or discipline unless the respondent demonstrates, or the Board finds on the face of the record on which the discipline in another jurisdiction was predicated that it clearly appears that:
>
> (A) the disciplinary or disability order of the foreign jurisdiction was not entered;
> (B) the disciplinary or disability order of the foreign jurisdiction does not apply to the respondent;
> (C) the disciplinary or disability order of the foreign jurisdiction does not remain in full force and effect as the result of appellate proceedings;
> (D) the procedure followed in the foreign disciplinary matter was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process;
> (E) the misconduct established warrants substantially different discipline.

A review of the record does not reveal any conditions that would fall within the ambit of subparagraphs (A) through (D). With respect to subparagraph (E), attorneys who have been held in contempt of court, or who fail to comply with court orders, typically receive reprimands. *See, e.g., In re Stanley*, 102 *N.J.* 244 (1986) (reprimand where the attorney interrupted and shouted at the court, displayed an arrogant and insulting demeanor, and engaged in other discourteous behavior toward the court; in mitigation, the attorney was retired from the practice of law at the time of the discipline, had no ethics history, and did not injure any party by his conduct); *In re Carroll*, 118 *N.J.* 437 (1990) (reprimand where the attorney wilfully violated a restraining order prohibiting him from contacting his wife, resulting in a judge finding him in contempt of court; in an unrelated matter, the attorney also failed to produce a written fee agreement, improperly

executed a jurat, and improperly compensated a client for referring a personal injury matter to him); *In re DeMarco*, 125 *N.J.* 1 (1991) (reprimand where the attorney was held in contempt for exhibiting a pattern of abusive and disruptive behavior toward a judge, including attacking the court's integrity); *In re Gaffney*, 133 *N.J.* 65 (1993) (reprimand where the attorney was held in contempt for failure to comply with orders directing him to file an appellate brief and to pay a monetary sanction; in addition, the attorney was guilty of gross neglect, lack of diligence, failure to communicate with a client, failure to expedite litigation, and failure to cooperate with the disciplinary authorities); *In re Hartmann*, 142 *N.J.* 587 (1995) (reprimand where, in one matter, the attorney repeatedly ignored court orders to pay opposing counsel a fee for the attorney's consistent tardiness, resulting in a warrant for his arrest, and in a second matter, the attorney entered a judge's chambers without permission and displayed discourteous, abusive, and threatening behavior in an attempt to intimidate the judge into hearing his client's matter, after the judge had granted an adjournment to the attorney's adversary); *In re Frankfurt*, 164 *N.J.* 596 (2000) (reprimand where the attorney continually failed to comply with orders that he appear in court for pre-trial conferences, refused to appear for trial, and displayed anger and hostility to the judge, who removed him from the case; the attorney was also guilty of lack of diligence, failure to expedite litigation, conduct prejudicial to the administration of justice, and failure to treat with courtesy and consideration all persons involved in the legal process). *But see In the Matter of Charles J. Mysak*, Docket No. DRB 95-125 (1995) (admonition imposed on an attorney who reargued a judge's evidentiary decision, raised his voice at the judge during the trial, and made a disparaging facial gesture at the court, resulting in a finding of contempt).

Acts of harassment, too, have resulted in the imposition of a reprimand. In *In re Thakker*, 177 *N.J.* 228 (2003), a reprimand was imposed where the attorney made numerous telephone calls to a former client, in which he asked to speak with her estranged husband, although he knew that the husband had been incarcerated earlier that day for an act of domestic violence; the attorney entered a guilty plea to the disorderly persons offense of harassment.

Because respondent's conduct involved two separate matters, and because respondent received an admonition in New York for similar behavior, in our view, a reprimand does not sufficiently address the gravity of his wrongdoing.

Based on the foregoing, we unanimously conclude that a three-month suspension is the appropriate level of discipline. In addition, before reinstatement, respondent must submit a report from a mental health professional approved by the Office of Attorney Ethics, concluding that he is fit to practice law. Two members did not participate.

We further 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
Chief Counsel

## *SUPREME COURT OF NEW JERSEY*
## *DISCIPLINARY REVIEW BOARD*
## *VOTING RECORD*

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Disposition: Three-month suspension

| *Members* | *Disbar* | *Three-month 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:*** | | 7 | | | | | 2 |

Julianne K. DeCore
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Chief Counsel