SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 04-192
District Docket No. XI-03-023E

IN THE MATTER OF	:
	:
KATHLEEN F. GAHLES	:
	:
AN ATTORNEY AT LAW	:

Decision

Argued: September 23, 2004

Decided: November 4, 2004

Lawrence M. Maron appeared on behalf of the District XI Ethics Committee.

Respondent appeared pro se.

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

Respondent was admitted to the New Jersey bar in 1982. In 1999, she was reprimanded for gross neglect and lack of diligence in an estate matter. Specifically, she failed to file inheritance tax returns, causing the estate to be assessed penalties. She also refused to resign as executrix, necessitating court action. Thereafter, she failed to promptly comply with a court order directing her to submit an informal accounting of the estate; four letters and a motion were required for respondent to comply with the order. Numerous

mitigating factors were considered: respondent's lack of a disciplinary record; her full cooperation with the DEC investigation; and a number of personal problems that afflicted her at the time, including her own contentious divorce, spousal abuse that continued after the husband left the marital home, and her grown stepson's removal from the house pursuant to a domestic violence order. Those problems caused respondent to seek therapy for herself and her two young children. Other mitigating circumstances were the deaths of her father, an aunt to whom she was close, a cousin with whom she grew up, and her brother-in-law. When the latter died, respondent had to assist her sister in moving from Florida to New Jersey and to oversee litigation in Florida relating to the accidental death of her brother-in-law. Moreover, for a period of two years, respondent was involved in two consecutive RICO trials that produced considerable impact on her sole pratice of law, causing a backlog and preventing her from keeping current with her other legal matters. A final consideration was respondent's lack of experience in estate matters. In re Gahles, 157 N.J. 639 (1999).

We first reviewed this matter in July 2003, as a post-hearing appeal from the District XIII Ethics Committee's dismissal of ethics charges against respondent. The original

complaint alleged that respondent violated RPC 3.4(e) (in trial, a lawyer shall not allude to any matter that will not be supported by admissible evidence) by failing to provide two signed certifications to a court in support of previously-submitted unsigned certifications. The complaint also alleged that respondent violated RPC 4.4 (a lawyer shall not use means that have no substantial purpose other than to embarrass or burden a third person) when, during oral argument on a matrimonial motion, she made "degrading" statements about an opposing party -- her client's wife -- with no substantial purpose other than to embarrass the wife.

Following a hearing, the District XIII Ethics Committee dismissed both charges, finding that respondent's failure to provide the signed certification pages had been inadvertent, and that her statements about the client's wife were intended to challenge the veracity of the wife's statements in a certification and to demonstrate to the court that it would not be in the best interests of the parties's child to grant custody to the wife.

The wife, Carol Vargo, appealed. We reversed and remanded the matter to a different committee (District XI Ethics Committee) "for reconsideration of the matter at a hearing, after the complaint is amended to include a count alleging a

violation of that portion of RPC 3.2 which requires that '[a] lawyer . . . shall treat with courtesy and consideration all persons involved in the legal process.'"

The District XI ethics Committee ("DEC") filed a two-count amended complaint. The first count repeated the allegations of the original complaint. The second count (the new count) alleged that respondent violated RPC 3.2 when she made the following statements about Mrs. Vargo:

- "The biggest con artist in the world is sitting at the table looking very sweet and concerned."
- ". . . the seven times that she came to court and got restraining orders. They were all dismissed because the Court found she was lying."
- "The woman is a fraud. Okay?"
- "I think there's something seriously wrong with this woman."
- "Okay? I mean, this is a person that cries out to be assaulted for this behavior."
- "Somebody has to, like, put her in jail or put her in the loony bin or do something . . . ."
- "She's crazy."

[Ex.C-2 at 2.]

Following a hearing, the DEC recommended the imposition of an admonition. After we considered the matter on the record, we

determined to bring it on for oral argument, pursuant to R. 1:20-15(f)(4).

Respondent represented Mickey Vargo in a protracted divorce proceeding that was permeated with strife between the parties. At one point, the court granted custody of the parties' minor child to the husband. According to respondent, the wife had hired and fired seven attorneys.

Mrs. Vargo's newest attorney, who had not represented her at the time of the consent order, made a motion to vacate the consent order, returnable on December 15, 2000. The judge who heard the motion was not the same judge that had presided over the case at the time of the consent order. The new judge had acquired some familiarity with the case by discussing it with the prior judge and, presumably, by reading parts of the record.

During oral argument on the motion, respondent made the aforementioned statements about Mrs. Vargo. When the judge opined that respondent's statement that Mrs. Vargo was crazy and belonged in a "loony bin" contained "very harsh words," respondent replied:

> . . . I'm sorry. Those are harsh words, but I do believe it. And - - and I'm sorry. You should have seen the scene that she made in this courtroom - - well, in Judge McCormick's courtroom that day that custody was transferred. She screamed and carried on. I think eight court

> officers had to physically carry her out of the room.
>
> [Ex.J-1 at 24-25 to Ex.J-1 at 25-6.]

Although Mrs. Vargo's attorney complained to the judge that Mrs. Vargo's past demeanor was not part of respondent's motion papers, the judge replied, "It's okay. I want to hear it." Except for commenting that one of respondent's statement contained "very harsh words," the judge was willing to listen to respondent's long discourse on what she perceived to be Mrs. Vargo's outrageous behavior throughout the case. The judge never interrupted respondent's argument, which spans about thirteen pages of transcript. In fact, at the close of respondent's argument, when she said to the judge, "I'm sorry, Judge. I didn't mean to go on and on," the judge stated, "That's quite all right." The judge must not have thought that any of respondent's statements were improper, inasmuch as the judge did not refer respondent's conduct to disciplinary authorities.

In her answer, respondent submitted explanations for or defenses to her conduct:

> I was merely advocating a position, which was for the best interest of the child involved. I know that I was very emotional that day, but this case has a horrendous history, which came close to destroying the minor child psychologically.
>
> . . . .

The child was summarily removed from the mother's custody for the [mother's] continued, unrelenting failure to abide by the Court's Order to facilitate visitation and phone contact with the father. In her decision, Judge McCormack [sic] noted that she was changing residential custody and that she refused to interview the child because, "he is so twisted form [sic] what has happened to him that it would be useless."

. . . .

Additionally, at the hearing before Judge McCormack [sic] the grievant made such a scene in the courtroom that at least six court officers had to restrain her and carry her to the back holding cell. She screamed so loudly and so long, that the child was terrified to go with his father and had to be physically escorted to the car by a court officer where he assaulted his father and broke his glasses.

. . . .

A thorough reading of the report of Dr. Suckerman and the attached transcript of the Custody tranfer will show this Committee that I did not say the words I am accused of lightly or to demean the litigant. I was merely passionate in the prosecution of my case and the need to deter this litigant from further harm to the child or abuse of the court.

. . . .

[Mrs. Vargo] had indicated to the Court (Judge Derman) that she was in a daze on the date of the Consent Order and felt pressured. I was there and she had both an attorney and her expert present. Additionally I personally observed this dazed woman on a pay phone cursing and kicking at the wall while speaking.

. . . .

> I believe I had the right to ask to have her jailed and to have a psychiatric evaluation based upon her continued non-compliance with any legal, moral, or ethical standards. If I were to be reprimanded or admonished for vigorously prosecuting my client's cause and that of the child, it would have a "chilling effect" on my ability as an advocate.
>
> [Ex.C-3¶6.]

As to her statement that Mrs. Vargo was "a person that cries out to be assaulted for this behavior," respondent offered this position:

> . . . I did utter those words but it appears that the committee has taken them out of context which disturbs me because the sentences preceding this explains the context fairly, "Okay? This is why he has custody. He's a good man; he's a good father. He has put up with this for all time without assaulting her." Which Judge McCormack [sic] said on the record . . . I — I admire you for your patience throughout all this. Okay? (Page 20 lines 16-21). I believe that it should be abundantly clear that I was making reference to her behavior over a period of seven years in alienating and harming this child with regard to Mr. Vargo's obvious restraint in the face of it. I do not believe that it should have been taken out of context. I did not mean that she should be assaulted but I do not believe that it should have been taken out of context. I did not mean that she should be assaulted but merely that she had cried out to be so by her continuous interference with his relationship with the child . . . [and that] Mr. Vargo had restrained himself. Perhaps it was inartfully worded in the heat of the moment. I certainly do not and have never advocated violence in any form, especially against women and children. I have always been an advocate for Woman's Rights and in 1977 volunteered two weeks of my time to go to

Washington, D.C., to join and help organize the March on Washington for the Equal Rights Amendment. I would never support or advocate any type of violence against women for any reason and I hope the Committee will understand that this was a remark taken out of context.

[Ex.C-3¶7.]

That's out of context. I meant to include – I was going to say by Judge McCormick's decision that, you know, Mr. Vargo had been very patient and not done anything rash [sic] like hit her or anything like that during the 5 and a half years I think that the divorce went on. So I really wanted to say that.

I don't mean that again, that anybody should hit anybody. I meant to say something like well, she cries out to be assaulted, and I was going to say but or, and Judge McCormick said my client's been, you know, very patient even though she's done all these outrageous things. That's what I meant. I know I didn't finish it.

You know, when you're standing in a courtroom and you're arguing a motion you get – you know how you get, you get like you're in the heat of the moment kind of thing. And it was – it really bothered me that this was a new judge, that the judge didn't know anything about this woman, and if you could see how she just totally – I can't explain it. Maybe I was just – maybe there's a lot of transference that goes on in these situations.

(T35-9 to T36-8.)[1]

I had no intention of embarrassing, delaying or burdening anyone. Every remark I made about Mrs. Vargo was for a substantial purpose such as having her jailed for contempt of Court, or

[1] T refers to the transcript of the DEC hearing on February 12, 2004.

> having a psychological examination for the purpose of preventing her from further harming the child.
>
> . . . .
>
> I said nothing that was not true and that I did not feel was necessary to the preservation of the sanity of the child and, quite frankly, my client and in aid of the legitimate purposes of the litigation.
>
> [Ex.C-3¶8.]
>
> . . . I have been a Criminal Attorney for many years and have tried many cases and when I think of the things that are said in that context I cannot feel that I have intentionally violated any of the Rules. If you find that I have then I apologize.
>
> [Ex.C-3¶9.]

Following the second hearing, the DEC unanimously dismissed the charges that respondent violated RPC 3.4(e) and RPC 4.4. By a two to one decision, the DEC hearing panel found that respondent violated RPC 3.2 through her statements to Mrs. Vargo during oral argument on the motion. The DEC recognized that the motion pertained to

> child custody in a long, drawn out and contentious divorce matter in which the respondent was representing the husband. The divorce and subsequent proceedings were extremely venomous with the wife circumventing court rules and disregarding court orders, and requiring her restraint by court officers on one occasion. The court itself had become frustrated with this litigant and granted sole custody of the child to the husband. The case had been transferred to a

> new judge at the time of the hearing in which the respondent made the remarks forming the basis of the formal complaint. The respondent made the remarks in an effort to impart to the new judge the contentious nature of the prior proceedings.
>
> [HPR¶8.][2]

Although the DEC noted that respondent's statements were "emotionally charged," it concluded, nevertheless, that they "went beyond the boundary of courtesy and consideration."

Following a de novo review of the record, we agree with the DEC that the evidence clearly and convincingly establishes that respondent's conduct was unethical. We also agree with the DEC's dismissal of the charges that respondent's statements about Mrs. Vargo violated RPC 4.4 and that her (inadvertent) failure to submit signed certifications to the court violated RPC 3.4(e).

We find, however, that respondent failed to treat Mrs. Vargo with courtesy and consideration, as required by RPC 3.2. In most instances, the impropriety lay not with what respondent said, but how she said it. Otherwise stated, with one exception (the "assault" statement), respondent's words might have had a dual, legitimate purpose, that is, to acquaint the new judge with the allegedly obstreperous and harmful conduct exhibited by

[2] HPR refers to the hearing panel report.

Mrs. Vargo during the unduly lengthy divorce proceeding and, at the same time, to advance her clients' interests in the course of the judge's review of the motion. Her choice of words, however, was more than indelicate.

A fair resolution of this matter requires that each of respondent's statements be evaluated separately and within the context of the matrimonial case.

"The biggest con artist in the world is sitting at the table looking very sweet and concerned."

It is undeniable that the expression "the biggest con artist in the world" was unprofessional. Although respondent's purpose was to alert the court that Mrs. Vargo's good deportment on that day was atypical, her choice of words was infelicitous, to say the least.

" . . . the seven times that she came to court and got restraining orders. They were all dismissed because the Court found she was lying."

There is nothing inherently wrong with the contents of this statement. Respondent was referring to the basis for the court's dismissal in each instance, that is, that Mrs. Vargo had lied to the court.

"The woman is a fraud. Okay?"

Here, too, respondent was heavy-handed in choosing the word "fraud," although her purpose was to warn the court about Mrs. Vargo's allegedly mendacious nature.

"I think there's something seriously wrong with this woman."

Once again, respondent had a legitimate purpose, but could have been more polite and sensitive in addressing her concerns about Mrs. Vargo's emotional stability. Standing alone, however, the statement was not quite discourteous enough to rise to the level of an ethics infraction.

"Okay? I mean this is a person that cries out to be assaulted for this behavior."

Although probably akin to the "you're asking for it" admonishment to a child, this statement deserves our most severe criticism. Not even with respondent's explanation does it become palatable. Surprisingly, the judge did not chastise her for it.

"Somebody has to, like, put her in jail or put her in the loony bin or do something so that . . . ."

Again, examined within proper context, the idea expressed in the statement is not intolerable: respondent's argument to the court was that Mrs. Vargo should either be held in contempt for her repeated failure to abide by court orders, or receive psychiatric treatment in a proper institution, considering her alarming behavior. The expression "loony bin," however, violated courtroom etiquette and degraded Mrs. Vargo. In fact, at the DEC hearing respondent conceded that she should have used the words "psychiatric facility." As respondent explained to the DEC and to us at oral argument: "I was just so wrapped up in what I was doing and . . . that looney bin thing just came out of my mouth. You know, I really shouldn't have said that and instead said psychiatric unit . . . ."

"She's crazy."

This final statement, too, when viewed against respondent's preceding argument, had a valid purpose: to convey to the judge that custody of the child should remain with the father, in light of Mrs. Vargo's allegedly unstable behavior. Respondent, however, should have used proper medical terminology.

Undeniably, thus, almost all of respondent's statements to the court on that day violated the requirement that attorneys treat with courtesy and consideration all persons involved in the legal process. RPC 3.2. "Lawyers must display a courteous and respectful attitude not only towards the court but towards opposing counsel, parties in the case, witnesses, court officers, clerks – in short, towards everyone and anyone who has anything to do with the legal process." In re Vincenti, 114 N.J. 275, 285 (1989). "Should an attorney fail to abide by these requirements, discipline should be imposed." Id. at 282.

Attorneys who have displayed discourteous conduct toward persons involved in the legal process have received admonitions or reprimands. See, e.g., 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 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; an aggravating factor was the attorney's prior six-month suspension for misconduct in criminal pre-trial negotiations and for his method in obtaining information to

assist a client); 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, he had no disciplinary record, and he did not injure anyone by his conduct).

When the behavior reaches the level of abuse and intimidation or is accompanied by other serious conduct, the discipline is more severe. See, e.g., In re Hall, 169 N.J. 347 (2001) (three month-suspension for attorney who failed to file an affidavit with the Office of Attorney Ethics after her suspension, continued to maintain a law office after the suspension, exhibited contemptuous conduct, accused her adversaries of lying, maligned the court, refused to abide by the court's instructions, suggested a conspiracy between the court and her adversaries, made baseless charges of racism against the court, and failed to reply to the ethics grievances); In re Vincenti, 114 N.J. 275 (1989) (three-month suspension imposed on attorney who challenged opposing counsel and a witness to fight, using loud, abusive, and profane language against his adversary and an opposing witness, and using racial innuendo on at least one occasion; the attorney also called a deputy attorney general a vulgar name, was

extremely abusive toward a judge's law clerk, and told her that she was incompetent); and In re Vincenti, 92 N.J. 591 (1983) (one-year suspension for attorney who became sarcastic and disrespectful toward a judge, accused the judge of collusion, cronyism, racism, and ex parte communications with the prosecutor, demeaned and harassed the judge and opposing counsel, referred to a court-appointed expert as an "extortionist psychologist," and argued with and used obscene language toward opposing counsel, witnesses, and others in the courthouse).

Here, respondent's conduct, although reproachable, was not designed to abuse or intimidate Mrs. Vargo, but to apprise the new judge of what she perceived to be Mrs. Vargo's abnormal and defiant behavior throughout the lengthy, contentious matrimonial matter. Furthermore, her statements were made in the heat of oral argument on a motion that involved crucial issues; as respondent explained, "I was addressing remarks to the court, you know, and I didn't mean to be discourteous, I meant to vigorously present my case." Also, we allow for the possibility that respondent's exaggerated reactions were prompted by memories of her own, difficult divorce case. Finally, respondent has already suffered some "punishment" by having to go through two DEC hearings in this matter.

After considering these circumstances and comparing respondent's conduct to that displayed by the attorneys in the above-cited cases, we are persuaded that a reprimand is the appropriate measure of discipline for her ethics transgressions.

We have not overlooked respondent's receipt of a reprimand in 1999. In our view, however, her ethics history does not require that the within transgressions be met with increased discipline -- a censure or a short-term suspension. Because the misconduct that led to her reprimand (gross neglect and lack of diligence) is unrelated to the conduct now under review, this is not the case of an attorney who failed to learn from similar mistakes. There is no evidence that respondent thought nothing of her prior brush with the disciplinary system and deliberately set out to run afoul of the professional rules once more. She crossed the line between permissible advocacy and unacceptable behavior only because of her zeal in representing her client's interests vigorously.

In light of the foregoing, we determine that a reprimand sufficiently addresses the extent of respondent's ethics offenses and, at the same time, preserves the confidence of the public in the bar and the judiciary as a whole. Members Barbara Schwartz and Spencer V. Wissinger, III did not participate.

We further determine to require respondent to reimburse the Disciplinary Oversight Committee for costs incurred in connection with the prosecution of this matter.

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

In the Matter of Kathleen F. Gahles
Docket No. DRB 04-192

Argued: September 23, 2004

Decided: November 4, 2004

Disposition: Reprimand

Members	Disbar	Suspension	Reprimand	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

By [signature] 11/1/04
Julianne K. DeCore
Chief Counsel