SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 02-467

IN THE MATTER OF

LARRY S. GELLER

AN ATTORNEY AT LAW

Decision

Argued: March 13, 3003

Decided: May 20, 2003

Brian D. Gillet 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.

This matter was before us based on a recommendation for discipline filed by Special Master Tina E. Bernstein. The twelve-count complaint charged respondent with about ninety *RPC* violations.

Respondent was admitted to the New Jersey bar in 1980. He has no disciplinary history. He is a sole practitioner in Maplewood, Essex County.

* * *

This case illustrates the unfortunate consequences that result from attorneys' representation of their own interests, particularly in family matters. All of the ethics charges stem from respondent's actions in connection with his own child support and custody matters. Until then, respondent had practiced law for almost twenty years without ethics implications. The Honorable Thomas W. Cavanagh, Jr., J.S.C., brought this matter to the attention of the Office of Attorney Ethics ("OAE") on December 5, 2000. Following a two-day hearing, the special master sustained almost all of the allegations of the complaint and recommended a reprimand. Although we were unable to agree with some of the special master's findings, we concluded that a reprimand is the appropriate discipline in this matter.

Count One

On December 17, 1996 Edith Ann Duggan, the mother of respondent's two children, filed a complaint against him in the Monmouth County Superior Court, Chancery Division, Family Part, seeking custody of the children, child support and attorneys' fees. In his January 30, 1997 *pro se* answer and counterclaim, respondent alleged that Duggan's negligence during her pregnancy caused their son to be born prematurely. He further claimed that Duggan was negligent in failing to obtain medical insurance for their son. Respondent later withdrew the counterclaim.

At some point, respondent retained an attorney to represent him. On April 18, 1997 his attorney filed a motion for reconsideration of an April 3, 1997 order by Judge Eugene A. Iadanza, awarding Duggan child support, payment of medical expenses and counsel fees. The motion also requested, among other things, the appointment of an expert to perform a custody evaluation. On June 19, 1997 Judge Iadanza entered an order increasing the amount of child support and appointing Dr. Karen Wells as the custody expert.

On December 8, 1997 respondent, who had discharged his attorney, filed a *pro se* cross-motion for an order "[r]emoving this case out of Monmouth County so defendant can receive a fair trial and [] removing the Honorable Eugene Iadanza as judge in this case since as my former counsel states 'This judge doesn't like you.'" Respondent's certification in support of his cross-motion asked that Judge Iadanza recuse himself:

> It is obvious that Your Honor doesn't like me. You have lost your ability to be objective in this case. It was obvious at the outset when you changed the original certification to a motion and added in attorney fees before plaintiff's counsel had an opportunity to bring it up. I am a Jewish lawyer from Essex County and both you and the plaintiff are Catholic and from Monmouth County. You both have ties to Holmdel, you being a municipal prosecutor for ten years. My parents fled Austria in the late '30s when, because of their religion, they were treated unfairly. I am seeking to have this case removed from Monmouth County for the same reason. Your Honor has chosen to believe what the plaintiff has said and discounted everything that I have said without a hearing or cross-examination. You have also allowed the plaintiff to be her own expert and analyze my income. Furthermore, you have awarded the plaintiff my municipal bonds, even though they were purchased before I even met her. I note from your resume supplied by the Law Journal pamphlet on Superior Court Judges, that you were a legislative aide for two different politicians. I wonder if you ever ran for office, because no office is mentioned. Sam Rayburn stated in <u>The Best and the Brightest</u> by David Halperstan that when Lyndon Johnson was raving about all the appointees in the Kennedy Administration he said, 'I wish they had at least run for sheriff once.' This is also true of Your Honor. You are treating this case like it is partisan politics instead of being objective. Accordingly, you should recuse yourself in this case and also Order that this case be removed from Monmouth County.
>
> Respondent's motion was denied.

Judge Iadanza stated at the ethics hearing that he treated the *Duggan v. Geller* matter the same way he treated the other several hundred cases that had been assigned to him and that, until he read respondent's certification, he was not aware of the parties' religions. He considered respondent's remarks to be offensive and inappropriate.

In his answer to the ethics complaint[1], respondent asserted that his remarks about Judge Iadanza were "entirely true. That statement is protected by the first Amendment of the New Jersey and U.S. Constitution." At the ethics hearing, respondent reiterated, "I think everything I said there was fair comment."

Count one of the complaint charged respondent with violations of *RPC* 3.1 (frivolous claim or contention), *RPC* 3.2 (failure to expedite litigation and to treat with courtesy and consideration all persons involved in the legal process), *RPC* 3.4(c) (knowing disobedience of an obligation under the rules of a tribunal), *RPC* 3.4(e) (allusion to matters that are not relevant or supported by admissible evidence), *RPC* 3.5(c) (conduct intended to disrupt a tribunal), *RPC* 8.2(a) (false statement about the qualifications of a judge), *RPC* 8.4(d) (conduct prejudicial to the administration of justice) and *RPC* 8.4(g) (conduct involving discrimination).

Count Two

At a November 18, 1997 case management conference at which respondent and Duggan were represented by counsel, Judge Iadanza made the following statement:

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[1] Respondent filed a *pro se* answer dated March 13, 2002; a verified answer, *pro se,* dated March 25, 2002; an amended verified answer through an attorney, dated April 29, 2002; a supplement to the amended answer, through his attorney, dated May 6, 2002; and a second amended verified answer, *pro se*, dated August 19, 2002.

> We spent a lot of time on motions, and case management. I signed an order on October 8th, and it appears to me that neither one of the clients have or are complying with the order. . . . I would expect that Mr. Geller would, because of his position as an attorney, would have some respect for a court order. And based upon all the discussions I've had with Ms. Duggan, and explaining things to her, I would expect that she should know that she needs to have some respect for a court order.

Respondent concluded that, because Judge Iadanza had alluded to discussions with Duggan, the judge had engaged in improper *ex parte* conversations with her. On January 20, 1998 respondent sent the following letter to Judge Iadanza:

> The sentence on the bottom of page two 'And based upon all the discussions I've had with Ms. Duggan . . . ' is very troubling. Apparently, you have had private ex parte discussions with the plaintiff. You have entirely lost your objectivity in this case. I am considering reporting this to the Advisory Committee on Judicial Conduct but before doing so will wait to see if you recuse yourself in this case.
>
> I am copying this letter to both Judge Peskoe and Judge Lawson. I think this behavior on your part is incredible.

By letter to respondent dated January 22, 1998, Judge Iadanza denied engaging in any private conversations with Duggan. He suggested that his comments in the transcript referred to discussions that took place when both parties appeared *pro se* or when Duggan was represented by prior counsel.

Not persuaded by Judge Iadanza's denials, respondent sent him a February 3, 1998 letter stating as follows:

> Plaintiff never appeared pro se.

> Also enclosed are the transcripts for the March 10th, March 27th and May 23rd hearings. I would like to point out that you never said anything to her during those hearings. Would you just save us all alot [sic] of time and recuse yourself at this time?

On February 6, 1998 Judge Iadanza again denied engaging in *ex parte* conversations with Duggan and again refused to recuse himself. He pointed out that the issue was rendered moot by his forthcoming transfer to the civil division, effective February 17, 1998. Although respondent implied that Judge Iadanza's transfer was somehow related to the *Duggan v. Geller* litigation, Judge Iadanza explained that, after his girlfriend (now his wife) accepted an administrative position with the human resources office within the Division of Youth and Family Services, it was determined that, to avoid potential conflicts, he would be assigned to the civil division. Judge Iadanza returned to the family division about six months later, after the family division was reorganized and the potential for conflicts was eliminated.

At the ethics hearing, Judge Iadanza testified that, despite these denials, respondent argued in an appellate brief that the judge had held *ex parte* conversations with Duggan. The judge specifically denied having had any discussions in chambers with Duggan, asserting that his policy is to hold all proceedings involving *pro se* litigants in the courtroom and in the presence of all counsel or parties.

Respondent admitted all of the allegations of the ethics complaint. He denied that his actions were unethical, however, reiterating his belief in the truth of his assertion. He

attached to his answer and introduced into evidence at the ethics hearing transcripts of various proceedings before Judge Iadanza. He argued that, despite Judge Iadanza's explanation that his discussions with Duggan had taken place in open court, the transcripts demonstrated that no such conversations had occurred on the record. In turn, Judge Iadanza testified that not all conversations were placed on the record. According to the judge, it was possible that he had had a conversation with Duggan after respondent had left the courtroom, following oral argument on a motion, and that such conversation might not have been on the record.

Count two of the complaint charged respondent with violations of *RPC* 3.1, *RPC* 3.2, *RPC* 3.4(c), *RPC* 3.5(c), *RPC* 8.2(a), *RPC* 8.4(d) and *RPC* 8.4(g).

Count Three

In February 1998, after Judge Iadanza's transfer to the civil division, the matter was assigned to Judge Thomas W. Cavanagh, Jr. On May 4, 1998 respondent wrote the following letter to Duggan's then-attorney:

> The dart throwing strategy might have worked with Judge Iadanza, but I doubt it is going to work with Judge Cavanaugh [sic].
>
> Regarding Dr. Wells, I am going to do a motion to reconsider all the horseshit orders by Judge Iadanza, as soon as I get my accountant's report. Dr. Wells will serve no purpose in this case and I will state so in response to your motion or in my own motion. As long as you make your fees, what do you care? What have you done for the $10,000.00 you've received so far?

During a May 18, 1998 case management conference before Judge Cavanagh, respondent remarked that Judge Iadanza had mismanaged the case and that his orders were "out in center field." During a February 5, 1999 argument on a motion, after Judge Cavanagh referred to respondent's comments about Judge Iadanza's orders, respondent interrupted the judge to assert that his comments had been "100 percent accurate." Judge Cavanagh cautioned respondent not to attempt to justify his characterization of Judge Iadanza's orders as "horseshit," finding those comments inappropriate and reprehensible. Judge Cavanagh opined that, if respondent had disagreed with Judge Iadanza's orders, he could have filed an interlocutory appeal. According to the judge, respondent never repudiated his "horseshit" comment.

For his part, respondent admitted sending the letter to Duggan's attorney. In his answer to the ethics complaint, respondent claimed that, although he should not have used the word "horseshit," he had not expected the attorney to send the letter to Judge Cavanagh. He denied that his conduct was unethical, contending that, if any action was unethical, it was the attorney's act of forwarding his letter to the judge. Although respondent argued that his communications with the attorney were privileged, he failed to cite a rule of evidence or any other support for this assertion. He also argued that his comments were true and protected by the Constitution.

According to respondent, after Judge Cavanagh learned that Judge Iadanza was going to be named as presiding judge of the family division, his orders became "punitive." Respondent contended that the orders had increased in length from an average of two pages per order to eight pages per order, beginning in February 1999 and continuing until the final judgment was entered, in September 2000.[2] Judge Cavanagh countered that, because respondent had expressed an intent to appeal his orders, he began to prepare the orders similarly to written opinions so that his reasoning would be clear.

Count three of the complaint charged respondent with violations of *RPC* 3.1, *RPC* 3.2, *RPC* 3.4(c), *RPC* 3.4(e), *RPC* 3.5(c), *RPC* 8.2(a) and *RPC* 8.4(d).

Count Four

The complaint charged that respondent consistently demeaned Duggan throughout the litigation. In an October 6, 1998 letter to Judge Cavanagh sent in response to a letter from Duggan, respondent stated that Duggan was mentally ill and a compulsive liar. He repeated those comments in his September 29, 1998 amended interrogatory answers. In addition, during Duggan's deposition on May 13, 1999, when both parties were *pro se*, respondent called Duggan a "moron" and said that she "lie[s] like a rug."

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[2] According to Judge Iadanza, he did not become presiding judge until January 2000, almost one year after respondent contended that the assignment had become known.

In his answer to the complaint, respondent denied that he consistently demeaned Duggan, asserting that, because they were involved in a child custody dispute, he had to bring certain facts to the court's attention. According to respondent, Duggan was seeing two psychologists and "wanted me to pay for a third, Dr. Wells, who was handpicked by her then-attorney." Both in his answer and at the ethics hearing, respondent apologized for calling Duggan a "moron," contending that he was frustrated by her consistent refusal to answer questions at her deposition.

Count four of the complaint charged respondent with violations of *RPC* 3.2, *RPC* 3.4(c), *RPC* 3.4(e), *RPC* 3.5(c), *RPC* 4.4 (respect for rights of third persons) and *RPC* 8.4(d).

Count Five

On December 7, 1998 respondent filed a certification opposing a motion filed by Duggan. The certification asserted as follows:

> Furthermore, I fired my attorney [] after this motion because she failed to listen to my requests and I could never reach her during the preparation of this motion. It appeared to me that all the work was done by their paralegals and it was horrible work. Their $5,000.00 bill for one motion is currently being litigated.

With respect to Judge Iadanza's prior orders in the case, the certification stated the following:

> 4. The two December Orders were the same Orders which were entered after I asked Judge Iadanza to recuse himself. In this Order, he granted everything that the plaintiff requested. My Exhibits 3A, B and C are the transcripts from that hearing. On page 36 the question from the court was 'Why haven't you paid the retainer for the court-appointed evaluator?' It was explained that both parties and their lawyers had met for an hour after the previous court appearance and it was suggested that we meet with a real social worker, Andrew Malakoff. . . Of course, Judge Iadanza, in typical fashion on page 37, line 13 states, 'You don't have to spend too much time on that. . . . I'll take care of that.'
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> 5. Also on page 53 of that same transcript, [Duggan's attorney] points out, 'We want Dr. Wells, I can tell you that.' I asked the court if I could get her curriculum vitae and the Judge's answer was no. I questioned Judge Iadanza as to why he picked her. His answer on line 23 was 'I'm not going to let you voir dire me. Sit down.' He picked her because she would opine for the plaintiff.

Referring to Duggan's interrogatories, respondent's certification stated the following: "Plaintiff's number 52 is interesting.[3] She used this Jewish angle with Judge Iadanza, but I hope it doesn't work with Your Honor. Monmouth County is known to be very provincial."

In the same December 7, 1998 certification, respondent made the following comment on Duggan's former attorney: "I just recently received [Duggan's attorney's] bill, which is a joke. The real dilemma is whether she will hire that thief again and waste more money or whether she will represent herself."

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[3] The record does not indicate the content of that interrogatory.

In a reply certification dated December 30, 1998, respondent claimed that, although Duggan earned $291 per week, she paid her mother and another individual $280 per week for child care expenses, adding, "This support Order could only be devised by someone like Judge Iadanza."

In his answer, respondent reaffirmed his statements about his former attorney. He pointed out that, after his attorney's law firm sued him for its $5,000 fee, it agreed to keep the $2,000 retainer and to withdraw its request for the additional $3,000.

With respect to the appointment of Dr. Wells, respondent's answer stated as follows: "Judge Iadanza appointed Dr. Wells, who was handpicked by the plaintiff, while she worked with Judge Iadanza's then-girlfriend, and current wife for the County of Monmouth." Respondent repeated these assertions at the ethics hearing.

As to his reference to Duggan's use of the "Jewish angle," respondent contended that Duggan consistently mentioned his religion when discussing holiday arrangements. For example, he alleged that, when he suggested that Duggan have the children for Christmas and he for Thanksgiving, Duggan remarked that he does not celebrate Christmas. According to respondent, Judge Iadanza granted Duggan both holidays.

Respondent apologized for referring to Duggan's attorney as a "thief," adding, nevertheless, that his bills had been excessive and that Duggan had fired him for that reason.

With respect to his criticism of Judge Iadanza's orders, respondent again argued that his comments were constitutionally protected.

Count five of the complaint charged respondent with violations of *RPC* 3.1, *RPC* 3.2, *RPC* 3.4(c), *RPC* 3.4(e), *RPC* 3.5(c), *RPC* 4.4, *RPC* 8.2(a) and *RPC* 8.4(d).

Count Six

On March 2, 1999 respondent filed a motion for various forms of relief, including the removal of Judge Cavanagh from the case and change of venue. In his supporting certification, respondent alleged as follows:

> In summation, it is clear that there is a conflict of interest because you are protecting your fellow jurist, the Honorable Eugene Iadanza because of his unethical conduct by having ex parte conversations with the plaintiff. Isn't it odd that Judge Iadanza was removed from the family Part in Monmouth County in February, 1998 to Civil, but then in September, 1998 moved back to Family Part? This case has gone from Iadanza and Duggan vs. Geller to Cavanagh and Duggan vs. Geller and is, therefore, a case which I clearly cannot win. What chance does a Jew from Essex County have in Monmouth County? Due to the obvious conflict of interest and lack of a fair trial, I respectfully request that you sign an order to have this case removed from Monmouth County.

Judge Cavanagh testified that he had been offended and "taken aback" by respondent's characterization, and that he had never given any thought to respondent's religious background.

On March 25, 1999 Judge Florence R. Peskoe heard respondent's motion for change of venue. When Judge Peskoe indicated that she was inclined to accept Judge Iadanza's word that he had not engaged in any private conversations with Duggan, respondent replied that Judge Iadanza was lying. On April 9, 1999 respondent filed a motion for leave to appeal Judge Peskoe's March 25, 1999 order denying a change of venue. In his supporting brief filed with the Appellate Division, respondent asserted the following:

> It is clear that Judge Iadanza had private ex parte conferences with the plaintiff. The case had became [sic] a 'home town' case where the Monmouth County plaintiff got whatever she requested.
>
> * * *
>
> I was hoping that when Judge Cavanagh took over from Judge Iadanza I would receive a fair trial. But Judge Cavanagh, as a new judge, feels compelled to protect whatever Judge Iadanza has already done. This is a clear conflict of interest between the two judges who work side by side in Monmouth County.

On May 11, 1999 the Appellate Division denied respondent's motion for leave to appeal.

In his answer to the ethics complaint, respondent contended that, because Judge Iadanza was about to be named presiding judge of the family part in Monmouth County, he "either was or was about to become Judge Cavanagh's boss which created a conflict of interest." Respondent stood by his position that, because he believed and continues to

believe that Judge Iadanza engaged in *ex parte* conversations with Duggan, his statements were accurate and not unethical.

Count six of the complaint charged respondent with violations of *RPC* 3.1, *RPC* 3.2, *RPC* 3.4(c), *RPC* 3.4(e), *RPC* 3.5(c), *RPC* 4.4, *RPC* 8.2(a), *RPC* 8.4(d) and *RPC* 8.4(g).

Count Seven

On April 16, 1999 respondent appeared before Judge Cavanagh for oral argument on various motions. At that proceeding, respondent stated that talking to Judge Iadanza was "like talking to the moon as they say." Respondent further complained as follows:

> And I'm from Essex County. She's from Monmouth County. This, as far – and everybody complained that Monmouth County being a hometown. But this, this is ridiculous what is going on in this case. It's completely unfair. All I want is a fair hearing, that's all I'm asking.

When Judge Cavanagh indicated that he was denying respondent's motion to reconsider the order appointing Dr. Wells, the following exchange took place:

> MR. GELLER: And that Cohen character[4] that was here this morning, did you order him to go see a psychologist?
>
> THE COURT: Excuse me?
>
> MR. GELLER: That Cohen guy that was here this morning.

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[4] Cohen was a litigant who had appeared before Judge Cavanagh while respondent was waiting to be heard on his motion.

THE COURT: Character, was that your reference?

MR. GELLER: Yes, character is the term I used, yes.

THE COURT: Mr. Geller, what right do you have to summarize someone else as a character?

MR. GELLER: He struck me as being a character.

THE COURT: That's really an inappropriate reference.

MR. GELLER: Okay, but has he, did you order him to go see a court psychologist?

THE COURT: What right do you have to criticize Mr. Cohen?

MR. GELLER: Why should I go see a court psychologist?

THE COURT: I'm not going to get into a discussion with you about Mr. Cohen in this case.

MR. GELLER: I would like to know an answer.

THE COURT: You have no right to know about his case, unless you want to go see Mr. Cohen and ask him if he wants to speak to you about his case. But I will not be intimidated by your position.

MR. GELLER: That she picked. I'm not an intimidation [sic].

THE COURT: Sit down Mr. Geller. And do not ever refer again to some other litigant in my courtroom as a character. You're supposed to be an office [sic] of the court.

MR. GELLER: I thought that was a perfectly appropriate term.

THE COURT: That's the problem, sir. You oftentimes think things are appropriate that aren't. That is inappropriate. The man

> doesn't have to be embarrassed by your reference to him as a character because you sat in the back and listened to his motion. I don't understand why you think you can do that.

According to Judge Cavanagh, during the above exchange, respondent's tone was sarcastic and grating. He perceived that respondent was "making fun" of Cohen.

The complaint further alleged that, at various times throughout the proceeding, respondent challenged Judge Cavanagh's authority and was instructed by the judge to sit down.

Respondent, in turn, contended that, although he had tried to be respectful toward Judge Cavanagh, he had become frustrated by the judge's rulings, which he perceived as becoming increasingly punitive. With respect to his comments about the inequality of treatment received because he was not from Monmouth County, respondent argued that he is entitled to a fair hearing under the due process clause of the Constitution. When asked by the special master if he had evidence of this alleged bias, respondent contended that his motions were always heard last, after all other attorneys had been heard. Respondent rejected the suggestion that the court was following protocol by first hearing cases with parties represented by attorneys and then proceeding with *pro se* matters. Respondent also asserted that, because he had the opportunity to observe many other proceedings while waiting to be heard, he perceived that the judges favored local attorneys as well as attorneys from large law firms or law firms with significant matrimonial practices.

As to his comments about another litigant, respondent contended that he was merely seeking an explanation for the judge's order that he pay $3,000 "for a court-appointed psychologist who was working with Judge Iadanza's girlfriend/wife." He also claimed that his comments were protected by the first amendment. Respondent denied that he challenged Judge Cavanagh's authority, stating that he had sat down whenever instructed to do so.

Count seven of the complaint charged respondent with violations of *RPC* 3.1, *RPC* 3.2, *RPC* 3.4(c), *RPC* 3.4(e), *RPC* 3.5(c), *RPC* 4.4, *RPC* 8.2(a) and *RPC* 8.4(d).

Count Eight

On May 11, 1999 Duggan's attorney took respondent's deposition. After answering general questions about his law practice, respondent mentioned that he had just settled a case in Hudson County where "they have good judges." The following exchange then took place between respondent and Duggan's attorney:

Q. You don't feel we have good judges in this case?

A. No. It's just the opposite. You have two that are corrupt.

Q. Which two?

A. Iadanza is corrupt for having private conferences and Cavanaugh [sic] is corrupt for protecting him.

Q. You believe Iadanza had private conferences?

A. Yes.

Q. With who?

A. Your client. He said it right on the record.

Later in the deposition, Duggan's attorney questioned respondent about his court appearances:

Q. And you go all over Northern Jersey?

A. I have one case in Monmouth unfortunately but other than that North Jersey.

Q. Unfortunately because?

A. Because the judges are corrupt. Iadanza is corrupt.

Q. This particular case that you're talking about was before Judge Iadanza?

A. That's correct.

Q. Not the case with Miss Duggan but the case you were referring to?

A. No. The case I'm referring to is Miss Duggan.

Q. So you don't have any other cases in Monmouth County?

A. No, never will.

Q. Why is that?

A. It's hometown and the Judges are Anti-Semitic I found and Iadanza is a short ugly man. He didn't like me from the get go. Short ugly and insecure I should add.

Q. That's it?

A. That's it.

Q. Anti-Semitic, short and ugly?

A. And insecure.

Q. And insecure?

A. And Napoleon complex, let's throw that out there.

Q. What about Judge Cavanaugh [sic]?

A. The new kid on the block. He's protecting the senior judge.

Q. Is he ugly?

A. No. He's actually an attractive man.

Q. Is he anti-Semitic?

A. Well, he's Irish; leave it at that. Monmouth County Irish have their own way of doing business.

Finally, when Duggan's attorney asked respondent about health insurance for the children, the following exchange took place:

Q. You weren't ordered to pay a hundred percent?

A. That might be eighty percent.

Q. But not a hundred percent?

A. I don't know. But what's the difference? Whatever she asked Iadanza said granted.

Judge Cavanagh testified that he found respondent's accusations of anti-Semitism to be reprehensible, especially when considered in light of respondent's aspersions on individuals of Irish descent.

For his part, respondent apologized for the above comments, noting that they had been made "in the heat of the deposition." He contended that, although the questions posed to him at the deposition were irrelevant, he was required to answer them because *R.* 4:14-3(c) does not permit objections to depositions based on relevancy. That rule provides as follows:

> No objection shall be made during the taking of a deposition except those addressed to the form of a question or to assert a privilege, a right to confidentiality or a limitation pursuant to a previously entered court order.

Respondent argued that, because the questions did not fall within the above exceptions, he was not permitted to object to them. He further asserted that, because the case was not tried, the deposition should not have been submitted to the court and that Duggan's attorney had sent it to Judge Cavanagh only to "gain favor in the case." At the ethics hearing, Judge Cavanagh testified that, although he believed that Duggan herself had sent him the deposition as an exhibit in support of a motion, she may have mailed it to him independently of a pleading.

Count eight of the complaint charged respondent with violations of *RPC* 3.1, *RPC* 3.2, *RPC* 3.4(c), *RPC* 3.4(e), *RPC* 3.5(c), *RPC* 4.4, *RPC* 8.2(a), *RPC* 8.4(d) and *RPC* 8.4(g).

Count Nine

On December 30, 1999 respondent filed a cross-motion seeking, among other things, the modification of previous orders and Judge Cavanagh's recusal "for refusing to treat the defendant in a fair and impartial manner." In his supporting certification, which he titled "Fraud in Freehold," respondent made the following comments:

- Exhibit 7 is the May 23, 1997 argument which indicates that Judge Iadanza conveniently made a mistake regarding my income.

- Regarding [Duggan's certification], how convenient it is that Karen Wells works as a full time contract employee of the Monmouth County DYFS. Another full time contract employee of Monmouth County DYFS is the wife of Judge Iadanza. The fraud in Freehold continues.

- Then plaintiff decides to put my daughter in private Catholic school. It is only half day. Aberdeen has a full day kindergarten in public school. There is only one reason for this decision, how much money she can extort from me. The best interests of the children are not even being considered by Your Honor or by the plaintiff. Furthermore, Amendment I of the Bill of Rights (Exhibit 11A) indicates

  > Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof. . .

  Plaintiff is Catholic. I am Jewish. Your Honor cannot establish my daughter's religion as Catholic by allowing her to go to a private Catholic school.

- 1992 through 1995 is the only period which is being used for pendente lite support. 1996 is totally irrelevant unless you decide to change the pendente lite support. Of course, when you do, you have to state your reasons, hopefully when I am present so you do not get these facts all mixed up.

- Not being complied with is the spirit and intent of the fraud being perpetrated in Freehold. P31, L12-15 is ludicrous. Tax returns correctly assess my income every year if you bothered to look at my tax returns. . . . P5, L24 through P6, L16 illuminates the fraud in Freehold.

In addition, on several occasions, respondent stated in his certification that "plaintiff gets anything she wants" from Judge Cavanagh while respondent gets the standard "I don't care what the defendant wants."

In his answer to the complaint, respondent asserted that both judges had made mistakes in their orders and had placed their findings on the record in the absence of the parties.[5] At the ethics hearing, respondent apologized for using the term "Fraud in Freehold." He reiterated his belief that a court order permitting Duggan to enroll his daughter in Catholic school violated the establishment clause of the first amendment. On cross-examination, however, he conceded that he had not performed legal research on this issue and was not familiar with case law permitting the primary custodial parent to make decisions concerning the education and religion of the parties' children. He contended that

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[5] Such practice is in accordance with *R.*1:6-2(f), which provides that, when judges make findings of fact and conclusions of law outside of the presence of the parties, the order disposing of the motion shall indicate the date on which they were rendered.

he had discussed the matter with other divorced couples of different faiths, and that none of the judges in those cases had become involved in selecting the children's religion.

Count nine of the complaint charged respondent with violations of *RPC* 3.1, *RPC* 3.2, *RPC* 3.4(c), *RPC* 3.4(e), *RPC* 3.5(c), *RPC* 4.4, *RPC* 8.2(a), *RPC* 8.4(d) and *RPC* 8.4(g).

Count Ten

At some point, Duggan filed a motion for the dismissal of respondent's pleadings and for other forms of relief. Respondent, in turn, filed a cross-motion for the modification and reconsideration of prior orders. Pursuant to an October 25, 1999 order, respondent had to (1) file two case information statements addressing his financial condition as of 1997 and currently; (2) serve Duggan with copies of his 1997 and 1998 business and personal income tax returns within fifteen days; and (3) pay the retainer of, and cooperate with, a forensic accountant appointed to evaluate his law practice. The order further cautioned respondent that failure to comply with its terms could result in the suppression of his pleadings.

On February 10, 2000 Judge Cavanagh entered an order finding that respondent had wilfully refused to comply with the provisions of his October 25, 1999 order. Judge Cavanagh ordered respondent's pleadings dismissed without prejudice. The order provided

that, if respondent complied with the October 25, 1999 order within thirty days, he could move for reinstatement of his pleadings and could contest the financial and support issues. Otherwise, the dismissal would become with prejudice. The order further sanctioned respondent $1,575 for failure to provide proof of life insurance, as previously ordered.

When respondent failed to comply with the February 10, 2000 order, his pleadings were dismissed with prejudice. He was permitted to attend the May 12, 2000 final hearing for the limited purpose of cross-examination. He was not allowed to present witnesses or any other evidence.

On September 1, 2000 Judge Cavanagh entered a final order granting sole custody of the children to Duggan and fixing the arrearages that respondent owed to Duggan by way of child support, counsel fees, medical expenses and the $1,575 sanction.

In addition, a bench warrant had been issued for respondent's failure to pay Dr. Wells' retainer. On December 23, 1997 Judge Iadanza had ordered respondent to contact Dr. Wells and pay her retainer. When Duggan's attorney contacted respondent to ascertain when he planned to comply with that order, respondent replied with the May 4, 1998 letter referring to Judge Iadanza's "horseshit orders." In December 1998 Duggan filed a motion to compel respondent to pay Dr. Wells' retainer. Judge Cavanagh entered a February 11, 1999 order directing respondent to do so and cautioning him that non-compliance would result in sanctions. Following respondent's unsuccessful appeal of the order, Judge

Cavanagh again directed respondent to pay Wells' retainer and to cooperate with the custody evaluation. At an April 16, 1999 oral argument on a motion, respondent announced, "I'm not going to pay her a dime Judge. I can tell you that right now."

On June 17, 1999 Judge Cavanagh issued a bench warrant based on respondent's noncompliance with his prior orders. He vacated the bench warrant, contingent on respondent's compliance with the order to pay Dr. Wells' retainer. On November 24, 1999 Dr. Wells sent a letter to Judge Cavanagh, stating that, due to respondent's failure to keep an appointment with her and refusal to make another appointment, she had withdrawn as custody evaluator. According to Dr. Wells' letter, when she asked respondent to schedule an appointment, he replied, "I do not plan on coming. That $6,000 bill is a joke. I've never seen anything so ridiculous." Judge Cavanagh found that respondent had "continually, willfully, and deliberately refused to obey a series of Court Orders regarding the appointment of Dr. Wells . . . . and [that] his intentional and willful refusal to accede to the directives in those Court Orders constituted conduct which gave rise to relief under R. 1:10-3, R. 5:8-5(c) and R. 5:8-6." According to Judge Cavanagh, from the time he was assigned to the case in February 1998 until he entered the final order on September 1, 2000, respondent's behavior had delayed the resolution of the matter. When Judge Cavanagh was asked why he had not held respondent in contempt, the special master sustained respondent's objection and did not permit the judge to answer.

Respondent's answer to the ethics complaint stated that the $1,575 sanction was moot and that he had provided proof of life insurance on at least two occasions. He denied that he had knowingly disobeyed a court order.

Count ten of the complaint charged respondent with violations of *RPC* 3.1, *RPC* 3.4(c), *RPC* 3.5(c) and *RPC* 8.4(d).

Count Eleven

On September 18, 2000 respondent filed an appeal from Judge Cavanagh's final order, dated September 1, 2000. In his appellate pleadings, respondent repeated many of his opinions of Judges Iadanza and Cavanagh. In the section of the civil case information statement form requesting a brief statement of the facts and procedural history, respondent stated, "This order is the product of a judge who has been unable to be fair and impartial." In the section reserved for listing the issues raised on appeal, respondent asserted, "This case needs to be heard by an objective judge."

In his appellate brief, respondent repeated the allegation that Judge Iadanza engaged in *ex parte* communications with Duggan. He also contended that, when he questioned Judge Iadanza's award of counsel fees, the judge's reply was "the typical Iadanza response . . . contrary to the Case Law and Court Rules."

As to Judge Cavanagh, respondent's brief contained the following statement:

> The first year he acted like he couldn't care less about the case and didn't do very much. Then in 1999 when it became clear that Judge Iadanza was becoming his boss, he did everything he could to protect Judge Iadanza. This clearly created a conflict of interest situation which bordered on fraud.

Respondent's brief also contained the following statements about the final hearing conducted by Judge Cavanagh:

- It is clear from the September, 2000 hearing that plaintiff didn't need to pay an attorney when the judge was doing a great job for her without one.

- Cross examination was severely limited because the judge intended to grant everything the plaintiff asked for.

On December 18, 2001 the Appellate Division affirmed the September 1, 2000 final order. Noting that respondent's contentions were clearly without merit, the Appellate Division opinion stated as follows:

> We note, however, that defendant's brief is replete with deficiencies. See R. 2:6-2(a)(5). Cherry Hill Dodge, Inc. v. Chrysler Credit Corp., 194 N.J. Super. 282, 283 (App. Div. 1984). 'Our rules of court are more than mere guides and admonitions. They were made to be complied with, and should not be lightly disregarded.' Abel v. Elizabeth Bd. of Works, 63 N.J. Super. 500, 509 (App. Div. 1960). Defendant is an attorney. His failure to furnish a brief with a concise statement of the facts material to each issue, adequate legal arguments, and a complete appendix, is inexcusable.

In his answer to the complaint, respondent commented that, contrary to information that he had received, indicating that the appeal would be heard by a panel of three judges, only two judges heard oral argument and ruled on his appeal. He further claimed that, although he submitted a revised brief, it was not received due to the anthrax situation at the

Trenton post office. Although respondent attached a petition for certification to the Supreme Court, the record does not indicate its disposition.

Count eleven of the complaint charged respondent with violations of *RPC* 1.1(a) (gross neglect), *RPC* 3.1, *RPC* 3.2, *RPC* 3.4(c), *RPC* 3.4(e), *RPC* 3.5(c), *RPC* 8.2(a) and *RPC* 8.4(d).

Count Twelve

After Judge Cavanagh reported respondent's conduct to the OAE, that office directed respondent to submit a reply. In his January 17, 2001 reply to the OAE, respondent attached his appellate brief and repeated many of his opinions of Judges Iadanza and Cavanagh.

Count twelve of the complaint charged respondent with violations of *RPC* 3.1, *RPC* 3.2, *RPC* 3.4(c), *RPC* 3.4(e), *RPC* 3.5(c), *RPC* 8.2(a) and *RPC* 8.4(d).

Respondent's Violation of the Special Master's Order

In his pre-hearing memorandum to the special master, respondent indicated his intent to send to Judge Iadanza transcripts from the various hearings and ask that he identify those portions in which he had had discussions with Duggan. During an August 16, 2002 telephonic pre-hearing conference conducted by the special master with

respondent and the presenter, the special master directed respondent not to contact Judge Iadanza. Notwithstanding this instruction, on September 30, 2002, about one week before the October 8, 2002 ethics hearing, respondent appeared at Judge Iadanza's chambers. The judge refused to meet with respondent. On October 2, 2002 respondent sent several transcripts to Judge Iadanza, asking him to indicate the portions that supported his claim that all discussions with Duggan had taken place in court.

The special master granted the presenter's request to amend the complaint to include a charge that respondent violated *RPC* 3.4(c) by contacting Judge Iadanza both on September 30, 2002 and on October 2, 2002, in direct violation of her August 16, 2002 instructions. At the ethics hearing, respondent argued that, because the special master's oral pronouncement was not reduced to writing, it was not enforceable under the parol evidence rule. He also testified that Judge Iadanza was not "man enough to see me" when he tried to meet with the judge.

Respondent's Conduct in the Ethics Proceeding

On September 11, 2002 respondent filed a motion with the special master seeking to (1) amend his answer because the answer filed by his former attorney was "ineffective"; (2) dismiss the ethics complaint because he did nothing unethical; (3) move the second day of the ethics hearing from Monmouth to Essex County to accommodate his witnesses; (4)

obtain subpoenas for Judge Lawrence Lawson and Judge Iadanza's law clerk from 1997-1998; and (5) have the special master recuse herself from hearing this matter. As to the latter request, respondent argued as follows in his motion papers:

> Like all litigants, I should be tried by a jury of my peers, or the Essex County Ethics Committee. If a Special Master is needed, they should be picked from Essex County. How can an attorney who regularly practices in matrimonial courts and whose firm practices in Monmouth County be fair and impartial between an Essex County lawyer and two Monmouth County judges?

On October 4, 2002 the special master entered an order denying every aspect of respondent's motion. With respect to the recusal motion, the special master stated that she had not represented a client in a matrimonial matter in ten years.

On October 7, 2002, the day before the ethics hearing, respondent "faxed" a letter to the special master requesting a stay to permit him to hire an attorney, obtain a psychiatric report and allow him time to prepare his case. The special master denied the request.

On January 2, 2003 respondent sent a letter to the Office of Disciplinary Review Board Counsel, acknowledging receipt of the report of the "alleged Special Master." In addition, in his brief filed with us, respondent questioned whether the deputy ethics counsel was "overprosecuting" the case because he "desires to be a Monmouth County judge."

Mitigation

Respondent called as witnesses his secretary, Kathryn Crisculo; his mother, Edith Geller; a friend, Eugene Madden; and a friend and attorney, Stanley Marcus. They testified about respondent's honesty, good character, fairness and excellent reputation. Respondent also testified that he coached Little League baseball for twenty years and that he taught at Brookdale Community College and Seton Hall University for five years.

The OAE urged a suspension of six months to one year. Respondent argued that either dismissal, an admonition or a reprimand would be appropriate.

* * *

With the exception of *RPC* 3.1 (frivolous claim or contention), the special master found that respondent had violated all of the charged *RPC*s.

The special master found that, by permitting his pleadings to be dismissed and by submitting a deficient brief, respondent was guilty of gross neglect, in violation of *RPC* 1.1(a). The special master remarked that such representation on behalf of a client would be considered gross neglect.

As to *RPC* 3.1, the special master noted respondent's claim that his actions had not been unethical because his statements during the litigation were privileged, were made as a

pro se litigant and were protected by the Constitution. Although the special master disagreed with respondent's legal analysis, she was unable to find that respondent knew his arguments were groundless.

The special master also found that respondent failed to expedite litigation, in violation of *RPC* 3.2, both as to the underlying matter and as to the ethics proceeding. She determined that the following actions, taken without a reasonable basis, constituted delaying tactics on respondent's part: (1) moving for reconsideration of every motion in *Duggan v. Geller*; (2) appealing adverse decisions on the basis that the judges had been unfair and partial; (3) seeking to have Judges Iadanza and Cavanagh, as well as the special master, disqualified; (4) moving for a change of venue due to the "Fraud in Freehold"; (5) moving to transfer the ethics hearing to Essex County before a jury of his peers; and (6) seeking a stay of the ethics hearing.

The special master further found that respondent also violated *RPC* 3.2 in the following instances: (1) by calling Duggan a moron, a compulsive liar, a mental case, mentally ill and a loser; (2) by accusing his former attorney of poor work; (3) by calling Duggan's attorney a thief; (4) by referring to an unrelated litigant as a "character"; (5) by alleging bias by Judges Iadanza and Cavanagh; and (6) by accusing Judge Iadanza of unethical conduct.

The special master also determined that respondent knowingly disobeyed an obligation under the rules of a tribunal, in violation of *RPC* 3.4(c), by (1) failing to file documents ordered by Judge Cavanagh; (2) failing to cooperate with the custody evaluator and the forensic accountant; (3) failing to provide proof of life insurance; and (4) contacting Judge Iadanza, in violation of her own directive.

In addition, the special master found that respondent alluded to matters that he did not reasonably believe to be relevant or supported by admissible evidence, in violation of *RPC* 3.4(e). She rejected respondent's argument that (1) his comments were protected by the Constitution, noting that he persisted in that contention even after the presenter introduced legal authority to the contrary; (2) his emotional state excused his actions; (3) that *RPC* applies only to conduct occurring during a trial; and (4) his conduct was not unethical because he was acting *pro se*.

According to the special master, respondent also engaged in conduct intended to disrupt a tribunal, in violation of *RPC* 3.5(c). The special master found that the "most egregious action by the Respondent is his continuing inability to accept when he is wrong," noting that, even at the ethics hearing, he criticized Judge Iadanza for not being "man enough" to meet with him, after the special master directed him not to contact the judge.

The special master further found that respondent's derogatory comments about Duggan and Cohen, the litigant respondent labeled a "character," violated *RPC* 4.4, and

that his constant criticisms of the qualifications of Judges Iadanza and Cavanagh, as well as hers, violated *RPC* 8.2(a).

According to the special master, respondent's overall conduct, particularly his reference to "Fraud in Freehold," also violated *RPC* 8.4(d).

Finally, the special master determined that, by accusing Judges Iadanza and Cavanagh of religious bias, respondent demonstrated "prejudice" against them, in violation of *RPC* 8.4(g).

The special master found the following mitigating factors: respondent practiced law for twenty-two years without any disciplinary problems; respondent represented himself in an emotional and hotly contested family matter involving child custody, visitation and support; all of the violations stemmed from the same case and related ethics hearing; respondent's character witnesses held him in high regard, both personally and professionally; and respondent is involved in legal and community activities and taught business law. In aggravation, the special master considered that there were more than ninety violations covering ten *RPCs*; the violations occurred over a period in excess of four years; respondent still does not recognize his own improper actions and statements, as shown by his testimony at the ethics hearing that Judge Iadanza was not "man enough" to meet with him; and one week before the ethics hearing, respondent violated her instructions not to contact Judge Iadanza.

The special master recommended a reprimand.

* * *

Following a *de novo* review, we are satisfied that the special master's finding that respondent's conduct was unethical is supported by clear and convincing evidence. We were unable to agree, however, with the special master's finding that respondent violated *RPC* 1.1(a). Specifically, the ethics complaint asserted that, by permitting his pleadings to be dismissed by Judge Cavanagh and by failing to file a proper appellate brief, respondent displayed gross neglect. Although respondent's deficiencies could have constituted gross neglect if he were representing a client, there is no basis for sanctioning him for inadequately representing himself. The primary purpose of discipline is to protect the public. *In re Infinito*, 94 *N.J.* 50 (1983). No purpose would be served by disciplining respondent under these circumstances. We, thus, dismissed the charge that respondent violated *RPC* 1.1(a). Unquestionably, however, respondent's conduct was unethical in other respects.

RPC 3.1 provides that a lawyer shall not assert an issue in a proceeding unless the lawyer knows or reasonably believes that there is a basis for doing so that is not frivolous. Respondent violated this *RPC* when he pleaded in motions, certifications and appellate

documents that Judge Iadanza was biased against him. On December 8, 1997 respondent moved for change of venue and for Judge Iadanza's recusal, alleging that he favored Duggan because she was from Monmouth County and Catholic, while respondent was from Essex County and Jewish. A year later, he filed a certification with Judge Cavanagh stating that Duggan had "used this Jewish angle with Judge Iadanza, but I hope it doesn't work with Your Honor. Monmouth County is known to be very provincial." In his March 2, 1999 motion for change of venue and recusal of Judge Cavanagh, respondent asked, "What chance does a Jew from Essex County have in Monmouth County?" In his May 11, 1999 deposition, respondent repeated these allegations of bias against Judges Iadanza and Cavanagh. In his September 18, 2000 appeal of the final order, respondent asserted that the order was "the product of a judge who has been unable to be fair and impartial." Although respondent may have believed that his claims were legitimate, this was not a reasonable belief. We, therefore, found that, by continuing to accuse the judges of bias without any factual support, respondent violated *RPC* 3.1.

As to respondent's accusations that Judge Iadanza had engaged in *ex parte* conversations with Duggan, although respondent might have had cause for some concern, based on the judge's reference to discussions with Duggan, instead of writing letters to the judge, he could have utilized other, more appropriate means to obtain relief: a motion for reconsideration, a motion for recusal or a motion for leave to appeal. He could also have

filed a grievance with the Advisory Committee on Judicial Conduct. Nevertheless, because his concerns about Judge Iadanza's possible *ex parte* conversations with Duggan were based on a genuine, albeit misguided, belief, we were unable to find that respondent's conduct in this context violated *RPC* 3.1.

RPC 3.2 provides that an attorney shall make reasonable efforts to expedite litigation and shall treat with courtesy and consideration all persons involved in the legal process. It is unquestionable that respondent failed to expedite the litigation. The child custody and support complaint was filed in December 1997. The final order was entered almost four years later, in September 2001. Respondent was primarily responsible for the delay. He asked the court to appoint an expert to evaluate custody and then moved for reconsideration of – and leave to appeal – that order. His failure to comply with court orders requiring him to produce documents and to cooperate with court-appointed experts resulted in further delays.

Moreover, respondent failed to treat others with courtesy and consideration. He made personal attacks against almost everyone involved in the matter, including Judges Iadanza and Cavanagh; his adversary and former girlfriend, Duggan; Duggans' attorney; an unrelated litigant, Cohen; and the court-appointed custody evaluator, Dr. Wells. After the ethics matter was assigned to Special Master Tina Bernstein, respondent questioned her objectivity as well, and moved for a new fact-finder from Essex County. Most recently, in his

brief filed with us, respondent questioned whether the OAE presenter was "overprosecuting" this case based on his desire to become a judge in Monmouth County. Although we considered that respondent was acting *pro se* in an emotional family matter, his unwarranted personal criticisms cannot be countenanced. We found that the above conduct violated *RPC* 3.2.

RPC 3.4(c) provides that a lawyer shall not knowingly disobey an obligation under the rules of a tribunal. Respondent failed to file case information statements, serve Duggan with his income tax returns, provide proof of life insurance, cooperate with Dr. Wells, pay Dr. Wells' fee, and cooperate with the court-appointed forensic accountant. Respondent's disagreement with the wisdom or fairness of those orders did not absolve him of the obligation to comply with them. At times, respondent's failure to comply with the orders was coupled with defiance. He announced to Judge Cavanagh that he refused "to pay [Dr. Wells] a dime."

In addition, during a telephonic pre-hearing conference, the special master directed respondent not to contact Judge Iadanza. Respondent disregarded the special master's clear instructions and tried to meet with the judge about one week before the ethics hearing. When his attempt was unsuccessful, respondent sent a letter to the judge. Respondent did not deny that he had understood the order. He contended that, because the written order did not contain the prohibition, he was not obligated to follow it, relying on the parol

evidence rule. Respondent's reliance was misplaced. The parol evidence rule applies to contracts, not to orders from a court or tribunal. A verbal order is as binding as a written order. Although it is not clear that the special master had the authority to prohibit respondent from contacting a witness expected to testify at the ethics hearing, once given, the order had to be followed. Respondent's failure to comply with orders of the court and the special master violated *RPC* 3.4(c).

RPC 3.4(e) provides that in trial, a lawyer shall not allude to any matter that the lawyer does not reasonably believe is relevant or that will not be supported by admissible evidence. Respondent contended that the court had no authority to order his daughter to attend a private Catholic school. He based his argument not on legal sources, but on his discussions with divorced couples of different faiths. His testimony at the ethics hearing revealed that he was not familiar with case law holding that the custodial parent is responsible for the religious and educational upbringing of children. His conduct in this regard violated *RPC* 3.4(e).

RPC 3.5(c) provides that a lawyer shall not engage in conduct intended to disrupt a tribunal. The special master found that respondent's failure to comply with court orders violated that *RPC*. We were unable to agree. There was no clear and convincing evidence, that respondent either disrupted tribunals or intended to do so. Although the record is replete with instances in which judges instructed respondent to be seated, he complied with

their orders. He was not held in contempt. We, thus, dismissed the charge that respondent violated *RPC* 3.5(c).

RPC 4.4 provides that a lawyer shall not use means that have no substantial purpose other than to embarrass, delay or burden a third person. At various times in the child custody litigation, respondent referred to Duggan as a moron, a compulsive liar, a mental case and a loser. Arguably, because child custody was at issue, respondent's characterization of Duggan as a "compulsive liar" and a "mental case" was intended to question her fitness as a parent, rather than cast aspersions. The same cannot be said of his statements that she was a "moron" and "lies like a rug." Also, respondent characterized Duggan's former attorney as a "thief". We found that respondent's unprofessional and demeaning comments violated *RPC* 4.4.

RPC 8.2(a) provides that an attorney shall not make a statement known to be false or with reckless disregard as to its truth or falsity concerning the qualifications of a judge. Respondent repeatedly criticized Judge Iadanza's handling of his case. In his May 4, 1998 letter to Duggan's attorney, respondent referred to Judge Iadanza's orders as "horseshit" and made other derogatory comments about him. Although respondent claimed that comments between attorneys are privileged, he could not identify any basis for his argument. Moreover, even if the letter were deemed to be privileged, respondent waived that privilege by repeating his comments at a February 5, 1999 hearing before Judge

Cavanagh. Respondent then argued that, because he was a *pro se* litigant, his comments about Judge Iadanza were privileged. Although respondent represented himself, he remained an attorney and an officer of the court. As such, he remained subject to discipline under the *Rules of Professional Conduct.*

Respondent's conduct during his deposition taken by Duggan's attorney was nothing short of appalling. His comments that Judges Iadanza and Cavanagh were corrupt and that Judge Iadanza was anti-Semitic were unwarranted and inexcusable. He claimed that, because the deposition was never used at trial, the transcript was irrelevant and that it had been sent to the judge only to "gain favor." The *RPCs* do not require that the comments be admissible to be unethical. The criticisms in and of themselves are sufficient. We noted that the attorney's questions inviting respondent's comments were seemingly asked without any legitimate discovery purposes, but merely to "bait" respondent. Nonetheless, respondent made serious charges against two judges, without any reasonable basis, in violation of *RPC* 8.2(a).

On the other hand, we found that respondent's comments, at the May 18, 1998 case management conference conducted by Judge Cavanagh, that Judge Iadanza had mismanaged the litigation and that his orders were out of "centerfield" did not rise to the level of an ethics violation.

We also found that respondent's conduct, as described above with respect to *RPC* 3.1, *RPC* 3.2, *RPC* 3.4(c), *RPC* 3.4(e) and *RPC* 8.2(a), was prejudicial to the administration of justice, in violation of *RPC* 8.4(d).

Finally, *RPC* 8.4(g) provides that an attorney shall not engage in conduct involving discrimination. Respondent's accusation of religious bias was not an act of discrimination; he was expressing his belief that he was the victim of discrimination. He exhibited ethnic bias, however, when he remarked that "Monmouth County Irish have their own way of doing business," referring to Judge Cavanaugh's rulings. *See In re Vincenti,* 114 *N.J.* 275, 283 (1989) ("In the context of either the practice of law or the administration of justice, prejudice both to the standing of this profession and the administration of justice will be virtually conclusive if intimidation, abuse, harassment, or threats focus or dwell on invidious discriminatory distinctions.")[6]

One additional point warrants mention. Count twelve of the complaint charged that, in his reply to the grievance, respondent attached his appellate brief and repeated many of his criticisms of Judges Iadanza and Cavanagh, in violation of seven *RPCs*. Attorneys should be able to reply to ethics grievances without fear of risking additional charges of unethical conduct. We, thus, dismissed the charges contained in count twelve.

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6 At the time that this case was decided, *RPC* 8.4(g) had not yet been adopted.

The special master relied on *In re Vincenti*, 92 *N.J.* 591 (1983) ("*Vincenti I*"), *In re Vincenti, supra*, 114 *N.J.* 275 (1989) ("*Vincenti II*"); *In re Hall*, 169 *N.J.* 347 (2001) ("*Hall I*") and *In re Hall*, 170 *N.J.* 400 (2002) ("*Hall II*"), although she concluded that respondent's conduct did not rise to the "level of egregiousness" found in those cases.

In *Vincenti I*, the attorney was suspended for one year when, in a child abuse/neglect case, he was sarcastic and disrespectful to the court, accused the judge of collusion, cronyism, racism, *ex parte* communications with the prosecutor and other improprieties, 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. In *Vincenti II*, the same attorney was suspended for three months for challenging 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; he 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.

In *Hall I*, a three-month suspension was imposed for the attorney's failure to file an affidavit with the OAE after her temporary suspension, her continued maintenance of a law office after her temporary suspension, contemptuous conduct, as found by a Superior Court judge, by accusing her adversaries of lying, maligning the court, refusing to abide by the

court's instructions, suggesting the existence of a conspiracy between the court and her adversaries, making baseless charges of racism against the court, and failing to reply to the ethics grievances. In *Hall II*, the same attorney was suspended for three years after she made numerous misrepresentations to trial and appellate judges; made false and baseless accusations against judges and adversaries; served a fraudulent subpoena; failed to appear for court proceedings and then misrepresented that she had not received notice; and displayed egregious courtroom demeanor by repeatedly interrupting others and becoming unduly argumentative and abusive. Her conduct occurred in four cases and spanned more than one year.

Less serious misconduct has resulted in the imposition of reprimands. *See, e.g., In re Stanley*, 102 *N.J.* 244 (1986) (attorney engaged in shouting and other discourteous behavior toward the court in three cases; in mitigation, we considered that the attorney was retired from the practice of law at the time of discipline, had no prior disciplinary history and did not injure anyone by his misconduct); *In re McAlevy*, 69 *N.J.* 349 (1976) (attorney physically attacked opposing counsel in chambers); and *In re Mezzacca*, 67 *N.J.* 387 (1975) (attorney referred to a departmental review committee as a "kangaroo court" and made other discourteous comments).

In mitigation, we considered that respondent was admitted to the bar in 1980 and has no disciplinary history. His actions were limited to an emotional child custody and

visitation matter in which he represented himself and to the ethics matter stemming from that case. There have been no complaints about his representation of any clients.

Based on the foregoing, we voted to impose a reprimand. Were it not for the mitigating factors, we would have voted to suspend respondent. Two members did not participate.

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

Disciplinary Review Board
Rocky L. Peterson, Chair

By: Robyn M. Hill
Robyn M. Hill
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Larry S. Geller
Docket No. DRB 02-467

Argued: March 13, 2003

Decided: May 20, 2003

Disposition: Reprimand

Members	*Disbar*	*Suspension*	*Reprimand*	*Admonition*	*Dismiss*	*Disqualified*	*Did not participate*
Peterson			X				
Maudsley			X				
Boylan							X
Brody			X				
Lolla			X				
O'Shaughnessy			X				
Pashman							X
Schwartz			X				
Wissinger			X				
Total:			7				2

Robyn M. Hill 5/22/03
Robyn M. Hill
Chief Counsel