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SUPREME COURT OF NEW JERSEY  
Disciplinary Review Board  
Docket No. DRB 02-189

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IN THE MATTER OF  
JACKIE S. GEORGE  
AN ATTORNEY AT LAW

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Decision

Argued: July 18, 2002

Decided: September 3, 2002

Nancy Lucianna appeared on behalf of the District IIB Ethics Committee.

Eduardo Cruz-Lopez appeared on behalf of respondent.

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 the District IIB Ethics Committee ("DEC"). The complaint charged respondent with violations of *RPC* 1.1, presumably both (a) (gross neglect) and (b) (pattern of neglect) (count one); *RPC* 3.3 (lack of candor toward a tribunal), *RPC* 3.5 (impartiality and decorum of the tribunal) and *RPC* 8.4, presumably both (c) (conduct involving dishonesty, fraud, deceit or misrepresentation) and (d) (conduct prejudicial to the administration of justice) (count two); and 8.4(d) (count three).

Respondent was admitted to the New Jersey bar in 1994. She has no disciplinary history.

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Essentially, the facts in this matter are not in dispute. There is no doubt that respondent, an inexperienced attorney, failed to follow proper procedures in her representation of a divorce client. The question is whether respondent's actions constituted excusable mistakes caused by inexperience or whether they amounted to unethical conduct.

In July 1997 Edward Zloty, a police officer, retained respondent to represent him in a divorce matter filed by his wife, Holly Holmes (the grievant). One of the main issues was the custody of the parties' children, then aged two years and nine months,

respectively. At first, Holmes sought court approval to relocate with the children to Texas, her home state. When the judge informally stated that he was not inclined to permit the removal of the children to Texas, Holmes sought primary custody and proposed moving to Belmar, New Jersey. After Zloty's prior attorney advised him to "make the best deal [he] could because the kids were going to be living in Texas," he retained respondent. Zloty's father, Edward Zloty, Sr., was chief of the Hudson County Sheriff's Department and referred Zloty to respondent. At that time, Holmes was in Texas with the children on a court-approved visit. According to Zloty, Holmes had threatened to remain in Texas and never return the children to New Jersey.

Respondent had been practicing law for three years when she began representing Zloty. Because she had never been involved in a custody trial or a complex matrimonial matter, respondent often consulted colleagues and contacted various organizations, such as the New Jersey State Bar Association, for assistance and guidance.

Count one of the complaint alleged that

[r]espondent failed to provide a timely expert report(s) on relevant trial issues in accordance with the Rules of Court governing the State of New Jersey, failed to instruct her client to appear for an examination with Holmes' expert on custody, failed to abide by the Rules of Court of the State of New Jersey in which to serve and issue a Subpoena to a Superior Court Judge and failed to abide by the Rules of Court of the State of New Jersey in filing and/or failing to file the appropriate Motions before the Court.

Respondent's failure to abide by the Rules of Court in the above-referenced instances caused unnecessary waste of judicial time and resources and further caused inadequate and incompetent representation of the interest of her client and demonstrated a pattern of neglect in violation of R.P.C. 1.1.

During the matrimonial proceedings, Zloty accused Holmes of refusing to follow the advice of an eye doctor who had recommended that the parties' daughter undergo surgery to correct a "lazy eye." It is undisputed that, on several occasions, respondent represented in court that Zloty had a report from a doctor stating that the surgery was necessary. It turned out that the report did not contain that opinion. According to Zloty, although the doctor had orally advised that the surgery was needed, the written report contained a diagnosis, but omitted that advice. Zloty testified that he mistakenly informed respondent that the written report in his possession prescribed surgery. Respondent relied on her client's representation.

Both parties had hired experts to render an opinion on the custody issue. In September 1997 Zloty went to the office of Holmes' expert, Dr. Leonard Jeffreys, to be evaluated. According to Zloty, during two visits Dr. Jeffreys primarily talked about the beach, his boat and his fishing trips. Zloty believed that these sessions were not productive and refused to return with his parents, as Dr. Jeffreys had requested. Zloty stated that, as a police officer, it was difficult for him to take time off from work or from visitation with his children. According to Zloty, he did not return to Dr. Jeffreys' office of his own volition, not at respondent's direction. Respondent consulted a colleague, who

advised her that Zloty could not be forced to submit to further evaluations by Dr. Jeffreys and suggested that respondent contact Dr. Jeffreys. At Zloty's request, respondent then sent a November 12, 1997 letter to Dr. Jeffreys, stating that Zloty would not appear for further examination, that Dr. Jeffreys' conduct was unprofessional and that a complaint had been forwarded to the Board of Psychological Examiners. Although Zloty did file a complaint with the Board of Psychological Examiners, it was dismissed upon Dr. Jeffreys' death.

P.M., Holmes' attorney, testified that respondent's delay in notifying Dr. Jeffreys that Zloty would not submit to further evaluations impaired her ability to prepare for the custody trial. According to P.M., Dr. Jeffreys was awaiting further visits with Zloty, before completing his expert report. Although Zloty had seen Dr. Jeffreys in September, it was not until November that respondent informed him of Zloty's refusal to return. Dr. Jeffreys finally submitted his report on the Friday before the scheduled Monday trial, after learning that Zloty would not return. Respondent objected to Dr. Jeffreys' report and testimony because she had not had the opportunity to forward the report to her own expert, Dr. David J. Gallina. Although the court did not permit Dr. Jeffreys to testify on that day, Holmes was required to pay the doctor's \$900 court appearance fee. Dr. Gallina later testified that respondent had never supplied him with Dr. Jeffreys' report and had never informed him of the earlier trial date. P.M., thus, concluded that respondent's

objection to Dr. Jeffrey's testimony and report was "a sham" that unnecessarily cost her client additional expert fees.

The judge who presided over the *Zloty* matter shared P.M.'s opinion:

There is an obvious need for payment of plaintiff's [Holmes] counsel fees emanating from the disparity in income. . . . This case should have been tried in a fraction of the time consumed. The length of the trial was protracted by the tactics of the defendant [Zloty] and his attorney. There was an unnecessary loss of judicial time and loss of litigants' money. Plaintiff was required to appear in opposition to a myriad of unnecessary motions. On the issue of custody, defendant's expert concluded that plaintiff should be the primary residential custodian of the children. Moreover, Dr. Gallina was not prepared to testify with respect to the issue involving plaintiff's move to Belmar. Plaintiff was compelled to incur an expense of \$900 for Dr. Jeffrey's [sic] first appearance because defendant's attorney claimed the report was not produced in sufficient time to consult with defendant's expert. To begin with the report was late because defendant and his parents failed to appear for follow up interviews. Secondly, Dr. Gallina testified that he had never been asked to prepare a response to Dr. Jeffrey's [sic] report. The Court observed during settlement conferences that defendant took a recalcitrant position and made excessive increasing demands after concessions were made by plaintiff. In summary the matter was clearly over litigated by the defendant.

Although Zloty's own expert concluded that Holmes should have primary custody of the children, respondent and Zloty continued to pursue an order awarding Zloty primary custody.

Shortly after respondent began representing Zloty, Judge John Grossi, J.S.C. Superior Court, Hudson County entered an August 1, 1997 order setting a visitation

schedule. The order contained an unusual provision, in that it granted both parents visitation rights, without specifying which party had custody of the children.

On August 4, 1997 Judge Grossi entered an order transferring venue from Hudson County to Bergen County, presumably due to Zloty's father's position as chief of the Hudson County Sheriff's Department. Respondent became concerned that, because there was no written order adjudicating custody, the matter would be transferred to Bergen County without an order settling the custody issue. Although it is not clear from the record, apparently respondent submitted an application to Judge Grossi, who, by letter dated August 7, 1997, told respondent that, because she had consented to the August 1, 1997 order, her submission was "superfluous."

At the same time, respondent became suspicious of her adversary's actions. P.M.'s predecessor, C.K., had told P.M. that respondent intentionally had filed a motion for custody at a time when she knew that C.K. would be unavailable. P.M. suggested that respondent was "sneaky" to have engaged in such conduct. C.K. then sent a "fax" to P.M. stating as follows: "I suggest that your adjectives (e.g. 'sneaky') will intensify as time goes on. Subject to availability, I stand ready to assist in any way without further charge." This "fax" was mistakenly sent to respondent, who misunderstood "adjectives" to mean "objectives." Respondent formed the belief that P.M. and C.K. were conspiring against her and that P.M. would be using "sneaky objectives."

After Judge Grossi rejected respondent's application, she wrote to Judge Arthur D'Italia, the assignment judge in Hudson County, stating that (1) there had been a change of venue; (2) she had not received cooperation from her adversaries or from the court, presumably referring to Judge Grossi; (3) she had contacted the Administrative Office of the Courts, who suggested that she contact an individual named Phil Sorrentino; (4) Sorrentino had advised her that, on August 8, 1997, Judge Grossi's court clerk would contact her, after reviewing the tape recording of the July hearing; (5) she had contacted Judge Grossi's chambers on August 11, 1997 and had been informed that he was on vacation for three weeks and that his staff was unavailable; (6) her efforts to receive assistance from the presiding family division judge in Hudson County had been unsuccessful; (7) C.K. and P.M. were "conspiring to do unethical acts"; (8) she would be filing ethics charges against both attorneys and, finally, (9) she needed his assistance in signing an order granting custody to Zloty.

On August 13, 1997 Judge D'Italia declined respondent's request for assistance, pointing out that she had failed to mention that she had signed the consent order entered by Judge Grossi. He advised respondent that she could submit a proposed form of supplementary order, addressing any omitted rulings, and suggested that any dispute as to the form of the supplementary order be resolved by the filing of a motion to fix the form



of the order. Judge D'Italia stated that, despite the venue change, Hudson County had retained jurisdiction over the form of the order.

According to respondent, because there was no written order on custody, Judge Edward Torack, the trial judge in Bergen County, refused to accept respondent's representation that Judge Grossi had awarded custody to Zloty. Respondent then ordered the transcripts of the proceedings before Judge Grossi and believed that she had to subpoena the judge as well. She reviewed the court rules and saw no prohibition against issuing a subpoena to a judge. After she issued the subpoena, the deputy attorney general assigned to the matter moved to quash it. Respondent then withdrew the subpoena. Respondent testified that she had tried to follow proper procedure and the "chain of command", that is, she had contacted Judge Grossi, the Administrative Office of the Courts and the assignment judge, among others. Respondent acknowledged that she had made a mistake in issuing the subpoena, not realizing that she could rely on the transcript of the proceedings.

Count two of the complaint alleged that respondent's failure to inform Judge D'Italia of the consent order and her statement that she had a written report requiring eye surgery constituted misrepresentations to a court, lack of candor to a tribunal and conduct prejudicial to the administration of justice.

Count three of the complaint alleged that respondent engaged in conduct prejudicial to the administration of justice by hiring an armed bodyguard to intimidate Holmes and by threatening to file ethics complaints against her adversary and Dr. Jeffreys. Specifically, in August 1997 Holmes exercised visitation by picking up and returning her children at the Secaucus home of respondent's parents. Zloty lived either with his parents or in the house next door. Holmes complained to P.M. that, when she approached the Secaucus home, police cars were present and that a crowd of people, including Zloty's fellow police officers, formed a barrier between her and the house. She told P.M. that she felt threatened and intimidated during these curbside exchanges. Holmes claimed that respondent was often present when she picked up or dropped off the children. Also present at times was Glenn Flora, a former sheriff's officer, who was employed by All Investigations, Inc., a private investigative service. Edward Zloty, Sr. had hired Flora to be present during curbside pickup and drop-off, in order to observe and act as a witness. Zloty Sr. was concerned that Holmes might fabricate a domestic violence charge, which could require Zloty's surrender of his firearm and, ultimately, his dismissal from the police force.

At the DEC hearing, Flora denied that respondent was present during the curbside exchanges. Zloty concurred, adding that, if respondent happened to be at his home to discuss the case, she would leave as soon as the children were dropped off so that he

could spend time with them.<sup>1</sup> In addition, Flora, Zloty and Zloty Sr. denied that anyone formed a barrier or impeded Holmes' access to her children.

On August 15, 1997, P.M. obtained a court order barring the presence of anyone during curbside exchanges, except the parties, the children, certain family friends and Zloty's parents and sister. The order specifically prohibited the presence of police cars, police officers and employees of either counsel.

Holmes also claimed that, at various times, Flora had made it clear that he was carrying a gun. She testified that, when she picked up the children, he would stand with his arms folded and lift his jacket or shirt to expose his gun holster. Holmes further alleged that Flora had accompanied respondent to court proceedings. According to Holmes, when she encountered Flora either at the Secaucus home or in court, he would make threatening statements to her.

Flora, in turn, denied carrying a weapon during the curbside exchanges and stated that, when he was at the courthouse, he was required to check his gun before being permitted entry into the courtroom. He further denied intentionally intimidating Holmes.

Flora was also assigned by All Investigations, Inc. to perform various services for respondent. He drove her to various court proceedings and acted as a bodyguard in

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<sup>1</sup> Although Zloty stated that respondent often worked at his home because she did not have her own office, there are no allegations that she failed to maintain a *bona fide* office.

certain cases. Respondent testified that, between her *pro bono* work for the Bergen County Legal Advocacy Program and for the Women's Rights Center, she represented many domestic violence victims. According to respondent, because of threats made both against her clients and herself, she found it necessary to hire a bodyguard. The owner of All Investigations, Inc., Vincent Cuseglio, testified that, pursuant to a "barter" arrangement, respondent had represented him and several corporations, including All Investigations, Inc., in exchange for bodyguard, investigative and driving services.

As noted earlier, during the matrimonial proceedings respondent developed a belief that P.M. and C.K. were conspiring against her. For instance, she believed that an order to show cause to transfer temporary custody to Holmes had been arranged to be heard when her adversaries knew that she would be unavailable. This is the same sort of tactic that C.K. had accused respondent of using against him. Also, P.M. testified that, during the matrimonial hearing, respondent announced her intention to file an ethics complaint against her. P.M. stated that, although respondent's comments could have been construed as signifying that Zloty would be filing the ethics grievance, on at least one occasion respondent made it clear that she had filed or was about to file a grievance herself. To P.M.'s knowledge, respondent never filed an ethics grievance against her. Neither did Zloty, although he testified that he had considered filing an ethics grievance

against P.M. for, among other things, introducing into evidence a recording of a telephone conversation between him and his mother.

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As noted above, count one of the complaint alleged that respondent violated *RPC* 1.1 by failing to provide a timely expert report, by failing to instruct her client to appear for examination by his wife's custody expert, by serving a subpoena on Judge Grossi and by filing or failing to file appropriate motions. Count one further alleged that respondent's failures wasted judicial time and resources, resulted in inadequate and incompetent representation of her client and demonstrated a pattern of neglect. Although the DEC found that the specific instances of misconduct alleged in count one did not rise to the level of unethical conduct, it found that Judge Torack's comments about respondent's "over litigation" required that respondent be disciplined.

Specifically, the DEC dismissed the charge of failure to timely file an expert report, finding that respondent's adversary could have filed motions to obtain the report and that the report was not relevant to a critical issue. Presumably, the DEC meant the eye doctor's report, since custody was obviously a critical issue. The DEC also dismissed the charges stemming from Zloty's refusal to return to Dr. Jeffreys' office for further

evaluation, finding insufficient evidence that respondent had instructed her client not to appear. The DEC further dismissed the charges concerning respondent's issuance of a subpoena for Judge Grossi to testify at the matrimonial hearing. The DEC reasoned that, although the issuance of the subpoena was unnecessary, respondent (1) was an inexperienced attorney, (2) was not aware that production of the transcripts was sufficient and (3) withdrew the subpoena as soon as she learned that it was not required. The DEC also found that the presenter did not pursue the charges that respondent failed to follow the court rules by "filing and/or failing to file the appropriate Motions before the Court."

As to the remainder of count one, the DEC concluded as follows:

The Panel finds that the Respondent did in fact waste judicial resources and further violate those ethical rules which require the expedient trial of a cause of action by over litigating the divorce and custody case. Specifically, Judge Torak [sic] found in his decision set forth in Exhibit C-1 of the Record that '[n]eedless to say this case has been extensively over litigated. There is a great amount of hostility, animosity and anger between the parties, which the Court observes to have increased during the litigation. In part, it is due to the defendant's innumerable and unnecessary applications to the Court and the party's [sic] need for therapeutic counseling.' The Committee finds that when all of the experts agreed that the Grievant should have custody of the children, she went on to litigate the custody case anyway. Thus, valuable judicial resources were wasted, hostilities were increased due to the intense emotional conflict which a custody battle would accrue'. . . . Judge Torak's [sic] admonitions indicate the need for some ethical consequence relating to the totality of Respondent's conduct of the underlying action.

[Hearing panel report at 11]

With respect to the charge of lack of candor toward a tribunal, the DEC found that respondent intended to mislead Judge D'Italia, when she did not disclose to him that she had signed a consent order addressing the same issue for which she sought relief. While acknowledging respondent's inexperience, the DEC found that respondent should have known that she was required to inform Judge D'Italia of the consent order.

The DEC declined to find unethical respondent's statement to the court that a written report from an eye doctor recommended that the parties' child undergo surgery. The DEC concluded that respondent's statement was negligent, because of her reliance on her client's representation.

The DEC rejected the charges that respondent engaged in conduct designed to intimidate Holmes. The DEC found no evidence that Flora had ever displayed his weapon to Holmes. Moreover, the DEC determined that any intimidation tactics that may have been displayed during custody exchanges was not the responsibility of respondent, but of the Zloty family, who arranged for the presence of Flora and the police officers:

The DEC addressed as follows the remaining charge of intimidation:

A[s] to threats against other litigants in the proceeding, the Panel finds that Respondent had an almost paranoid, conspiratorial outlook on the litigation process. The Panel finds that the various allegations of unethical conduct, even if prompted by her misunderstanding as to certain messages she received, or information that she received from her client, did establish an aura of intimidation during the proceeding which should result in some discipline. Respondent was much too quick to threaten or pursue the

issuance of an ethical proceeding against anyone who stood in her or her client's way.

[Hearing panel report at 13]

Taking into account respondent's inexperience, the DEC recommended a reprimand and "supervisory assistance" for two years, with quarterly reports submitted to the Office of Attorney Ethics, at respondent's expense.

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Following a *de novo* review of the record, we are satisfied that the DEC's finding that respondent's conduct was unethical is supported by clear and convincing evidence. We were not persuaded, however, that all the allegations of the complaint were sustained.

As mentioned above, the DEC declined to find that respondent's failure to provide a timely expert report was unethical. Presumably, the DEC was referring to respondent's failure to produce the report from the eye doctor. Respondent relied on her client's representation that he had a written report. As it turned out, her client was mistaken. Although a more prudent attorney might have demanded a copy of the report before repeating the client's assertion, because respondent's inadvertent statement was grounded on her client's representations, the DEC's dismissal of this charge was appropriate.



The DEC's dismissal of the charges relating to Zloty's failure to return to Dr. Jeffreys' office also was correct. It is undisputed that Zloty had submitted to an evaluation by Dr. Jeffreys, his wife's custody expert, on two occasions. Zloty testified that Dr. Jeffreys spent most of the two sessions discussing boating and fishing. Zloty displayed his frustration with Dr. Jeffreys by filing an ethics complaint against him with the Board of Psychological Examiners. That complaint was never resolved, due to Dr. Jeffreys' death. When confronted with an unusual situation in which her client declined to continue the evaluation, respondent contacted a colleague and was informed that she was not required to insist that Zloty return to Dr. Jeffreys for further evaluation. Indeed, Zloty denied that respondent had specifically instructed him not to return. Instead, respondent memorialized her client's decision in a letter. While respondent should have done so in a more timely manner (the letter was written two months after the last office visit), it cannot be said that her conduct was unethical.

Similarly, respondent's issuance of a subpoena for Judge Grossi's appearance did not rise to the level of an ethics violation. There is no evidence that respondent did so with any ill motives. As a relatively new attorney, respondent was obviously overwhelmed by her first custody case. The stakes were high – her client had two very small children and claimed that his wife threatened to take them to Texas without his permission or court approval. After two hearings, respondent understood that Judge Grossi had awarded

her client temporary custody. When respondent was shown the order, however, it addressed only the parties' visitation rights, not custody. According to respondent, although she should not have signed a consent order that did not address custody, she did not notice this omission at the time. Several days later, she contacted Judge Grossi, who not only denied her request for relief, but also transferred the matter from Hudson County to Bergen County. Respondent then took a series of actions, including contacting the Administrative Office of the Courts and various court officials to rectify what she believed was a procedural dilemma, that is, (1) although Judge Grossi orally granted her client custody, he refused to memorialize that ruling in a written order; (2) because the case was transferred to Bergen County, the judge assigned to the case would not be aware of Judge Grossi's custody ruling; and (3) Hudson County would not entertain her application because venue had been transferred to Bergen County. After Judge D'Italia denied respondent's request, the matter proceeded in Bergen County, where the custody issue was litigated. In order to establish that Zloty had been granted temporary custody, respondent issued a subpoena for Judge Grossi to testify at the custody trial. According to respondent, she reviewed the court rules and found no prohibition against such action. Upon receiving the motion to quash the subpoena and learning that she could simply introduce the transcripts of the hearing to establish the ruling, respondent withdrew the subpoena. Although respondent's course of action was not the common practice, we were

not convinced that it was marked by venality but, instead, by inexperience and lack of understanding of procedures.

The presenter apparently abandoned the allegation in count one of the complaint addressing respondent's filing of, or failure to file, motions. No evidence was introduced on that issue.

Although the DEC dismissed all of the specific allegations of count one, it found, based primarily on Judge Torack's comments, that there was a need "for some ethical consequence relating to the totality of Respondent's conduct of the underlying action." Apparently, the DEC believed that it was bound by the judge's unfavorable assessment of respondent's behavior. Presumably, the DEC was troubled, in part, by respondent's continued litigation of the custody issue after her own expert recommended that Holmes receive primary custody of the parties' children. In addition, the DEC criticized the waste of judicial resources caused by respondent's repeated applications to the court. Seemingly, the DEC found respondent guilty of a violation of *RPC 3.2* (failure to expedite litigation), even though it did not specifically cite that rule. Due process considerations, however, preclude us from agreeing with the DEC. Respondent was not apprised of that charge and had no opportunity to defend against it. It appears that she could have raised some defenses. For example, if Zloty had directed respondent not to abandon his request for custody, her continued pursuit of that claim may not have been unreasonable,

particularly in light of Holmes' intention to remove the children to Texas.<sup>2</sup> While the DEC correctly pointed out that respondent apparently failed to understand that "the role of an attorney is that of counselor as well as an advocate, and her obligation was not to simply carry out the wishes of the client, but to guide the client as well," her actions were not necessarily unethical. Furthermore, if Judge Grossi believed that respondent's actions were unethical, he would have referred the matter to the disciplinary authorities, as he is required to do. Judge Grossi's failure to do so suggests that, although he disapproved of some of respondent's actions, he did not believe that they were unethical.

Apparently, the DEC's finding was also grounded on Judge Grossi's award of attorney fees to Holmes. It is clear, however, that Judge Grossi based his ruling not only on Zloty's and respondent's tactics, but also on Zloty's income, Holmes' financial need and the parties' need for "therapeutic counseling." Had Judge Grossi believed respondent's conduct to be offensive or egregious, he would have sanctioned her, instead of ordering Zloty to pay a portion of his wife's counsel fees, a common ruling in matrimonial cases.

Moreover, although the complaint alleged in a conclusory fashion that respondent inadequately and incompetently represented her client, the grievant in this matter was not Zloty, her client, but Holmes, her client's wife. Zloty testified that he was pleased with

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<sup>2</sup> At the time of the ethics hearing, Holmes' application to relocate to Texas was on appeal.

respondent's services. Here, the complaint contains inconsistent allegations: respondent is accused of neglecting her client and at the same time criticized for her zealous representation. As the DEC pointed out, rather than neglecting her client's interests, respondent, if anything, was "overaggressive." For the above reasons, we did not find a violation of *RPC* 1.1.

The charge in count two of the complaint that respondent lacked candor to a tribunal stemmed from her failure to inform Judge D'Italia that she had signed the consent order on visitation issues. In this regard, respondent tried to seek relief from one judge, without disclosing that she had signed a consent order submitted to another judge. Here, we find that respondent should have told Judge D'Italia about the consent order. Because Judge D'Italia's review of the matter might have been different, had he known of the consent order, respondent's failure to disclose it was misleading to the court and in violation of *RPC* 3.3(a)(5). Our review of the record persuaded us that respondent's conduct in this regard was knowing and deliberate.

We agreed, however, with the DEC's dismissal of the charge that respondent misrepresented to Judge Torack that she had a written report from a doctor stating that the parties' daughter required eye surgery. As discussed above, respondent relied on the representations of her client, when she conveyed that information to the court. Based on

respondent's belief that her statement was true, it cannot be said that she intentionally made a misrepresentation to a judge.

Respondent's conduct in this regard is distinguishable from that of the attorney in *In re Mark*, 132 N.J. 268 (1993). In that case, the attorney had assumed the workload of several other lawyers who had left his law firm. On the evening before the scheduled trial of a complex matter, a partner assigned the case to Mark, who reviewed the file and appeared in court the next day. Because he was not thoroughly familiar with the file and because standard procedure in his office was to supply expert reports, Mark represented to the court, at trial, that his adversary had received two medical reports. After the jury returned a verdict in favor of Mark's client, the adversary filed a motion for a new trial, based on the failure to timely provide expert reports. Believing that letters enclosing the expert reports to his adversary were in the file, Mark prepared two transmittal letters indicating that the reports had been submitted to counsel well before the trial. In a certification in opposition to the motion, Mark stated that "there is no doubt that [the reports] were provided to plaintiff's attorney months before the trial date." Upon receipt of Mark's certification, his adversary noticed that the name of the law firm on the two transmittal letters post-dated the dates on the letters. When Mark was confronted with this information, he arranged to meet with the assignment judge and disclosed the events. Mark acknowledged his wrongdoing, stating that, at the time of his representation to the

court that the letters had been supplied to his adversary, he believed that statement to be true. Mark also testified that he believed that the letters transmitting the reports had been in the file and he recreated them only because his reply to the motion for new trial was overdue. Mark was suspended for three months.

Here, respondent did not fabricate letters or state unequivocally in a certification to the court that she had a written report from an eye doctor indicating that surgery was required. Rather, in reliance on her client's statement to her, she negligently conveyed to the court information that turned out to be erroneous. Although respondent might have been careless, her actions did not amount to unethical conduct.

The final count of the complaint charged that respondent embarked on a course of intimidation by hiring an armed investigator and by threatening to file ethics charges against her adversary. The DEC correctly dismissed the charges relating to the investigator, Flora. We found no clear and convincing evidence that Flora threatened anyone or brandished his weapon. In addition, any intimidation would not have been respondent's responsibility. Flora was hired by Zloty Sr. to witness the curbside exchanges of the children. Even if respondent had hired Flora, there was no evidence that she instructed him to threaten or intimidate Holmes or anyone else.

The complaint charged that respondent's threat to file an ethics grievance against P.M., as well as the threat to file a complaint against Dr. Jeffreys, violated *RPC* 8.4(d).

Respondent's client Zloty actually filed a complaint against Dr. Jeffreys, which was dismissed upon Dr. Jeffreys' death. The DEC correctly declined to find any impropriety with regard to the complaint against Dr. Jeffreys.

We found, however, an ethics infraction with regard to the threat against P.M. Respondent allegedly believed, due to a misinterpretation of the "fax" that she had inadvertently received, that P.M. and C.K. were conspiring against her. She also purportedly believed that P.M. intentionally scheduled a hearing to take place on a date when respondent was unavailable. Despite respondent's suspicions, unfounded or not, she should not have engaged in threatening behavior. If respondent truly believed that her adversary had committed ethics infractions, it was her duty under *RPC 8.3(a)* to contact the disciplinary authorities. Since she did not, it is logical to conclude that her threat to file an ethics grievance was calculated to intimidate her adversary. Attorneys must be permitted the latitude to represent their clients within the confines of the ethics rules, without concern that an adversary will threaten to file an ethics grievance against them. We cannot condone respondent's use of such tactics and intimidation, which violated *RPC 8.4(d)*.

There remains the issue of the quantum of discipline. In similar cases involving lack of candor to a court, reprimands have been imposed. *See, e.g., In re Kantor*, 165 N.J. 572 (2000) (reprimand when, after being charged with operating an automobile without



liability insurance, attorney misrepresented to a municipal court judge that his automobile insurance coverage was in effect at the time of the offense); *In re Mazeau*, 122 N.J. 244 (1991) (attorney reprimanded for failure to disclose to a court his representation of a client in a prior lawsuit, where that representation would have been a factor in the court's ruling on the attorney's motion to file a late notice of tort claim); *In re Marlowe*, 121 N.J. 236 (1990) (attorney reprimanded for falsely representing to the court that all counsel consented to an adjournment of the matter); *In re Whitmore*, 117 N.J. 472 (1990) (reprimand where a municipal prosecutor failed to disclose to the court that a police officer whose testimony was critical to the prosecution of a drunk-driving case intentionally left the courtroom before the case was called, resulting in the dismissal of the charge).

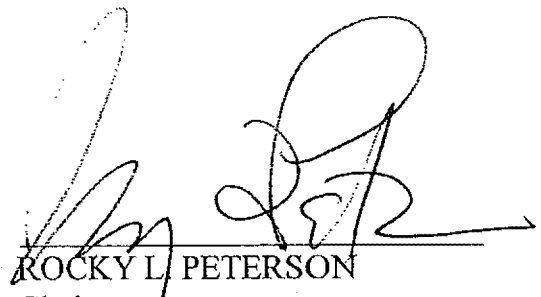
Although, in addition to exhibiting a lack of candor, respondent also engaged in conduct prejudicial to the administration of justice by intimidating her adversary with threats of filing an ethics grievance, the presence of mitigating factors compelled us to vote for the imposition of a reprimand. While it is true that respondent made some mistakes in her representation of Zloty, those mistakes resulted from a variety of understandable factors: (1) she lacked experience; (2) she was overwhelmed by her first custody dispute; (3) she believed that P.M. was engaging in improper behavior and was conspiring against her with Holmes' prior attorney; (4) she used poor judgment when she served Judge Grossi with a subpoena and when she contacted Judge D'Italia and (5) she

may have permitted her client's desire to pursue custody at all costs to cloud her role as counsel. It appears that respondent has learned from these mistakes. In the five years that have elapsed since these events occurred, there have been no additional incidents.

Based on the foregoing, a five-member majority voted to impose a reprimand. Although one of those members did not find a violation of *RPC 3.3(a)(5)*, that member agreed that a reprimand was the appropriate disciplinary sanction. Three members voted for a dismissal, finding that respondent's actions were not intentional, but the product of inexperience and unfamiliarity with procedure. As such, they did not rise to the level of unethical conduct. One member did not participate.

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

By:



ROCKY L. PETERSON  
Chair  
Disciplinary Review Board