SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 90-306

IN THE MATTER OF	:
JEFFREY J. GRENELL,	:
AN ATTORNEY AT LAW	:

Decision and Recommendation
of the
Disciplinary Review Board

Argued: January 16, 1991

Decided: March 1, 1991

Paula T. Granuzzo appeared on behalf of the Office of Attorney Ethics.

L. Steven Pessin appeared on behalf of respondent.

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

This matter is before the Board based upon a presentment filed by the District X Ethics Committee.

Respondent, who was admitted to practice law in New Jersey in 1972, is currently a sole practitioner in Vernon.[1]

At the beginning of the hearing before the special ethics master at the committee level, respondent requested that the

[1] On November 13, 1990, the New Jersey Supreme Court denied a temporary suspension motion based upon these underlying matters, but placed restrictions on respondent's practice. Pending the resolution of these ethics proceedings, respondent is not to appear before any court, agency, board, or tribunal, or to participate in any depositions. This Court order is now the basis of pending litigation by respondent in the United States District Court against the Supreme Court of New Jersey, Chief Justice Wilentz, and the Office of Attorney Ethics.

special ethics master recuse himself because respondent had filed an ethics complaint against the special ethics master when he was the presiding judge in Sussex County. Respondent contended, as a further reason for recusal, that the master had a pattern of ruling against him in civil matters. The special ethics master denied respondent's motion, stating that he had no previous knowledge that respondent had filed a judicial ethics complaint. He also denied any pattern of ruling against respondent and refused to recuse himself, stating that if he recused himself everytime he had ruled against an attorney in a previous hearing, he could never sit as a judge (1T7-13).[2]

Simmons Matter[3]

In 1982, grievant obtained a divorce from his wife, Sharon Simmons, who was represented by respondent. Subsequently, respondent married Sharon Simmons. In 1987, Mr. Simmons was ordered to pay two-thirds of his oldest child's college tuition. Mr. Simmons then filed a motion to have monthly child support reduced because the child was not living at home, which motion was granted. Sharon (Simmons) Grenell appealed this reduction in child

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[2] 1T refers to the transcript of the March 26, 1990 hearing before the special ethics master on behalf of the District X Ethics Committee.

[3] In this matter, respondent contended that this count should be deferred, pursuant to R. 1:20-11(d), pending completion of civil litigation in the underlying case. The special master declined to defer the hearing, stating the deferral was discretionary on the part of the Office of Attorney Ethics ("OAE") and that the OAE had decided to go forward with the proceeding.

support. In March 1988, while this appeal was pending, respondent filed two criminal complaints with the Newton Municipal Court charging Mr. Simmons with failure to obey a court order and with perjury. As a result of action by the prosecutor, the complaint charging Mr. Simmons with failure to obey a court order was dismissed. The perjury complaint was heard in Newton Municipal Court and Mr. Simmons was found not guilty.

The formal ethics complaint states that respondent inappropriately filed criminal charges against Mr. Simmons to harass him, with knowledge that the charges were frivolous and false, and to obtain an advantage in the pending civil litigation.

At the time respondent filed the complaint concerning Mr. Simmons' alleged failure to obey a court order, Mr. Simmons was in fact making the ordered payments (1T58). Moreover, Mr. Simmons' alleged perjury was his listing of assets that he had recently sold in a case information statement submitted to the court at the time he asked for a reduction in child support payments. This inclusion of assets was to Mr. Simmon's disadvantage in requesting a reduction and he testified it was inadvertent (1T45-50; C-5 in evidence).

In addition, Mr. Simmons testified that he received telephone calls from respondent, who threatened to destroy him financially by taking him to court (1T101).[4] Mr. Simmons' attorney, Mr. L., testified that, at the criminal hearing, respondent was shouting

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[4] In fact, Mr. Simmons testified he had spent $50,000 to $60,000 on legal fees, before he started representing himself, because of the continuing litigation by respondent (1T103).

obscenities at Mr. Simmons as they were on the courthouse stairs and, at a later hearing, respondent threatened to kill Mr. L. if he even looked at him (1T112-115).

The special ethics master found that respondent had violated RPC 3.1, which provides that a lawyer shall not bring a proceeding that is frivolous, and RPC 8.4(d), which prohibits conduct that is prejudicial to the administration of justice.

Dana Matter[5]

In this case, Craig U. Dana, a municipal court judge, on November 21, 1988 conducted a proceeding in which respondent represented his client on a disorderly persons violation. At that hearing, the police officer, who was not a witness to the incident, was to present the witnesses to the judge as there was no municipal court prosecutor. Respondent requested that the police officer be sequestered, which was done. Respondent then became loud and uncontrolled when the judge called the witnesses without any opening statement by the state (C-24 in evidence). Respondent was charged with contempt of court and removed from the courtroom. His client ultimately apologized to the judge for his attorney's behavior (C-24 in evidence, pp.21-22). As testified to by Judge Dana:

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[5] At the Disciplinary Review Board hearing, respondent raised the procedural issue that there is pending litigation against Judge Dana by him. On November 21, 1990, respondent filed a civil action for deprivation of his civil rights and the use of excessive force in United States District Court against Judge Dana and the two state troopers who enforced the contempt order in the underlying matter. The Board decided to hear this ethics matter.

The Special Master: As a result of everything that transpired up to this point, Mr. Dana, did you get any impression or reaction as to what Mr. Grenell was trying to accomplish?

The Witness: Yes, I did, your Honor. What he was trying to accomplish in my opinion, was to frustrate the entire proceedings and to prevent the case from going forward. I also believe that he was--as I indicated earlier, attempting to intimidate the witnesses and myself as the Municipal Court Judge. [2T105.][6]

The special ethics master found that respondent had violated RPC 3.5(c), by engaging in conduct intended to disrupt a tribunal, and RPC 8.4(d), by displaying conduct prejudicial to the administration of justice.

Conforti Matter

Judge Conforti filed a grievance against respondent for his behavior in the representation of a client on a motion concerning an estate matter. All counsel to the motion were called into the judge's chambers to review the file before the hearing. Respondent, in his challenge to the court's jurisdiction, engaged in constant argument with the court, and left the judge's chambers against the wishes of the court. Judge Conforti then heard the case in the courtroom and again respondent interrupted the proceedings by twice leaving the courtroom. During the courtroom hearing, respondent also contended that he was never served with

[6] 2T refers to the transcript of the April 2, 1990 hearing before the special ethics matter on behalf of the District X Ethics Committee.

the motion papers. Opposing counsel indicated that not only was service carried out, but that respondent himself had requested an adjournment on this specific motion (C-26 in evidence, pp.3-4).

Judge Conforti's law clerk testified that, before the judge entered the courtroom, respondent was screaming obscenities at his adversaries. The clerk stated that every other word was "F___ this", and that respondent was calling the other attorneys "assholes" (2T127).

The special master found that respondent had violated RPC 3.3(a), by knowingly making a false statement to the tribunal concerning service of the motion papers. He also found violations of RPC 3.5(c), conduct intended to disrupt a tribunal, and RPC 8.4(d), conduct prejudicial to the administration of justice.

Donovan Matter

Kevin Donovan, law secretary to Judge Conforti, was officiating at a settlement conference in small claims when respondent interrupted the conference and insisted that his matter be taken immediately as he was an attorney. When his request was refused, respondent yelled and stormed off, only to return again in five minutes to make the same demand. Mr. Donovan also observed respondent screaming obscenities at his adversaries in the waiting room. Both lay people and attorneys were waiting to have their cases heard in this waiting room. Mr. Donovan asked respondent to leave the courthouse due to his conduct (2T139-140).

The special ethics master found that respondent had violated RPC 3.5(c) (conduct intended to disrupt a tribunal) and RPC 8.4(d) (conduct prejudicial to the administration of justice).

Goldman Matter

On March 15, 1989, respondent appeared in municipal court before Judge Goldman, the grievant herein, representing his client on a moving vehicle violation. Judge Goldman had to adjourn the hearing until another day when there would be no one in the courtroom, because she believed respondent's behavior would have a detrimental effect on the other cases being presented later that day. Respondent was grimacing to the audience and making gestures of disbelief whenever he was not in agreement with a court ruling. He would turn his back to the judge when she was addressing him or walk to the back of the courtroom. The municipal court clerk testified that a member of the audience stated "This is like a circus."

Judge Goldman charged respondent with contempt following the first day of hearing. The contempt matter was heard separately and respondent was acquitted by the appellate judge, who found reasonable doubt as to his guilt. During the second day of hearings in front of Judge Goldman (the second day was not considered in the contempt hearing) respondent was observed to close his eyes, drop his head, and begin snoring while the Judge was giving her ruling on the case. When Judge Goldman advised respondent it was not appropriate behavior to fall asleep,

respondent immediately opened his eyes and denied being asleep (C-31 in evidence, pp.18-19).

The special ethics master found that respondent again violated RPC 3.5(c) and RPC 8.4(d) in this matter.

Failure to Cooperate

The presenter of this ethics hearing, Edward Dunne, filed a letter on April 4, 1990, in which he set out respondent's lack of cooperation and abusive behavior towards him during these ethics proceedings.

The presenter explained how service of the original complaint was accomplished and yet how respondent alleged non-receipt of the complaint. He also detailed respondent's behavior during the ethics proceedings and his failure to file an answer.

The special ethics master found that respondent had violated RPC 3.3(a)(1), by stating that he had not been served with the complaint when, in truth, he had been served. He also found violations of RPC 3.5(c) (conduct intended to disrupt tribunal), RPC 8.1(b) (failure to file an answer), and RPC 8.4(d) (conduct prejudicial to administration of justice).

Following hearing on all of these matters, the special ethics master recommended that respondent be suspended. In his opinion, to allow respondent to continue to practice law would be detrimental to the bar and to the process of judicial administration. He also recommended that a psychiatric evaluation

be made to determine whether respondent was mentally responsible for his course of conduct.

CONCLUSION AND RECOMMENDATION

Upon a de novo review of the record, the Board is satisfied that the conclusions of the committee in finding respondent guilty of unethical conduct are fully supported by clear and convincing evidence.

In the Simmons matter, respondent abused his privileged status as an attorney by harassing a member of the public in bringing two frivolous criminal complaints. Respondent knew or should have known that Mr. Simmons was fulfilling the order to pay the tuition and that Simmons' misstatement on the case information statement was insignificant in impact.

RPC 3.1 states that a lawyer shall neither bring or defend a proceeding, nor assert or controvert an issue therein unless a lawyer knows or reasonably believes that there is a basis for doing so that is not frivolous. At the very least, in filing these two complaints, respondent initiated two actions based on frivolous issues.[7]

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[7] DR 7-105 stated, "A lawyer shall not present, participate in presenting, or threaten to present criminal charges to obtain an improper advantage in a civil matter." This section was not contained in the Rules of Professional Conduct when adopted in 1984. However, in Opinion No. 595, ___ N.J.L.J. ___ (1986), the Advisory Committee on Professional Ethics concluded that this principle continues in effect in New Jersey, even though it was not explicitly adopted as part of the new rules. Nonetheless, the Board does not need to address the relevance of this rule, as the conduct in Simmons clearly falls below the standard enunciated in RPC 3.1.

The Court has not previously publicly disciplined an attorney for violation of RPC 3.1. However, the Court has imposed sanctions, ranging from suspension for three months to suspension for one year, for filing criminal charges to influence a civil matter. For example, in In re Kreiger, 48 N.J. 186 (1966), an attorney represented a plaintiff in civil litigation and initiated criminal prosecution against a witness for the purpose of achieving favorable results in that civil action. The Court held the attorney's conduct to be unethical and suspended him for three months.

Similarly, in In re Cohn, 46 N.J. 202 (1966), an attorney represented the owner of a tavern in an action filed by a patron who sustained injury from a fall in front of the tavern. The injured woman and her husband sued the tavern. Depositions disclosed that the marriage was not valid. The attorney assisted, cooperated and participated in the filing of criminal charges by his client against the plaintiff so as to obtain an advantage in the civil suit, i.e., to influence the injured woman to discontinue her suit. The court suspended the attorney for one year based on this conduct, together with one conflict of interest charge. See also In re Dworkin, 16 N.J. 455 (1954), where an attorney was suspended for one year following disclosure of his conduct in threatening criminal proceedings against the forger of an endorsement on a government check, unless the forger returned the $70 obtained via the forgery to respondent's counsel and simultaneouly paid the attorney's counsel fee of $100.

In addition to his harassment of Simmons, in the remaining matters (Dana, Conforti, Donovan and Goldman), respondent engaged in abusive language toward adversaries, disrespectful behavior toward judges, and the making of a false statement of material fact to a tribunal. He continued to demonstrate similar improper behavior during the ethics proceedings. Discipline for similar discourteous behavior by an attorney toward the courts and others involved in the legal process has ranged from a public reprimand to a five-year suspension.

Public reprimand resulted in Matter of Stanley, 102 N.J. 244 (1986), where an attorney engaged in shouting and other discourteous behavior toward the court in three separate cases. This attorney was retired from the practice of law at the time of discipline, had no prior history of ethical infractions, and did not injure any party by his conduct. Similarly, in In re Yengo, 92 N.J. 9 (1983), an attorney was publicly reprimanded for absenting himself for two days of a five-week trial without prior notice to the court. Mitigating factors included the attorney's age, his failing health, his wife's precarious health, and his imminent withdrawal from the practice of law. A public reprimand also resulted in In re McAlevy, 69 N.J. 349 (1976) where the attorney physically attacked opposing counsel. In mitigation, the attorney had no previous disciplinary record and expressed regret for his actions. [N.B.: In 1983, Mr. McAlevy received a three-month suspension for discourteous conduct toward a judge and an adversary. In re McAlevy, 94 N.J. 201 (1983) (McAlevy II)].

Finally, in In re Mezzacca, 67 N.J. 387 (1975), an attorney received a public reprimand for referring to a departmental review committee as a "kangaroo court"; as well as making other discourteous comments. He had no previous ethics infractions and may have become personally involved in the cause of his client.

Suspension has been imposed by the Court where more serious misconduct has occurred. In two of these cases, McAlevy, II, supra, and Matter of Vincenti, the attorneys had previously been disciplined for similar offensive behavior. In 1983, Mr. Vincenti received a one-year suspension based upon twenty-three counts of making insulting verbal attacks on judges, lawyers, witnesses and bystanders. The court noted that respondent's misconduct was not an isolated example of loss of composure brought on by the emotion of the moment. Rather, respondent was clearly attempting to intimidate, threaten, and bully those whose interests did not coincide with his own. In re Vincenti, 92 N.J. 591 (1983). In 1985, Mr. Vincenti again engaged in name calling of one adversary and a judge's law clerk. The Court found this continuing behavior to be a violation of RPC 3.2 and 8.4(d) and stated, "undue and extraneous oppression and harassment of participants involved in litigation can impair their effectiveness, not only as advocates for their clients, but also as officers of the court." Matter of Vincenti, 114 N.J. 275, 281-82 (1989). The Court imposed a three-month suspension in this second Vincenti case, citing the attorney's prior discipline as an aggravating factor.

In the only other similar New Jersey case that resulted in a long term suspension, the attorney attempted to intimidate the disciplinary authorities in Indiana. This attorney threatened to publish allegations of mental illness of one of the disciplinary board members and filed lawsuits against people who filed or prosecuted ethics complaints against him, and was disbarred in Indiana as a result. In re Friedland, 92 N.J. 107 (1983). The Court stated that similar conduct in New Jersey might justify disbarment. The Court, nonetheless, suspended the attorney for five years, a punishment comparable to the Indiana disbarment.

The Board notes that several aggravating factors exist, in the instant case, which were not present in the cited disciplinary cases. Here, respondent's behavior has harmed other parties. His harassment of Mr. Simmons has cost Mr. Simmons both time and money. Furthermore, his client in the Dana matter had to apologize to the judge for his own attorney's behavior, and had to find other counsel to represent him. Moreover, since March 1988, respondent has been abusive toward court personnel and his adversaries, which behavior has persisted throughout the ethics hearings. As an example, at the Disciplinary Review Board hearing, respondent insisted upon interrupting his own counsel. When he was told to allow his counsel to speak for him, he became angry, declared in a loud voice that he was leaving, kicked a large box across the floor, and then left the room. It is therefore apparent that respondent has engaged in an extensive pattern of misbehavior over a lengthy period of time. In addition, the Board considers as a

further aggravating factor that respondent deliberately lied to the tribunals in the Dunne and Conforti matters about service of process. Similarly, respondent, by his conduct, has made it impossible, as seen in the Goldman and Dana matters, for court hearings to continue. His behavior is not only offensive and deceitful, but completely destructive to the orderly administration of justice.

The primary goal in disciplinary cases is not to punish the individual, but to protect the integrity of the profession and to protect the public from any reoccurrence. Although mitigating factors are relevant and may be considered, In re Hughes, 90 N.J. 36 (1982), respondent has not presented any such mitigating factors to the Board. At the Board hearing, respondent's counsel was specifically asked if his client believed his behavior was appropriate. His counsel stated that the behavior was appropriate, and was simply a matter of style. Although respondent's counsel acknowledged that his client had multiple sclerosis, he did not see, based on these proceedings, any need for medical or pyschiatric treatment of his client.

Indeed, the record is devoid of any substantiation of respondent's claimed medical condition or of its relationship, if any, to the unethical actions under review. Nonetheless, the Board remains perplexed by respondent's continuing offensive behavior and lack of cooperation.

The need for public discipline is clear. There is also a need for expert input on respondent's health before he resumes his law

practice. Accordingly, following consideration of both the extent of respondent's misconduct and the aggravating factors presented, a majority of the Board recommends that respondent be suspended for two years. The Board further recommends that, at the conclusion of this two-year suspension, respondent be placed on disability inactive status. Any transfer from disability inactive status shall conform with R. 1:20-9(f). The Board believes that respondent should meet the higher standard required by R. 1:20(f), prior to reinstatement, including, if necessary, examination by physicians and/or psychiatrists retained by the Office of Attorney Ethics, in order to insure the protection of the public.

The Board also recommends that respondent be required to practice under a proctorship for an indefinite period, following his reinstatement to the practice of law.

One member dissented, voting for disbarment.

The Board further recommends that respondent reimburse the Ethics Financial Committee for administrative costs.

Dated: 3/1/2021

By: Raymond R. Trombadore
Chair
Disciplinary Review Board