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| IN THE MATTER OF | : | SUPREME COURT OF NEW JERSEY |
| | : | Disciplinary Review Board |
| JEFFREY J. GRENELL, | : | Docket No. DRB 90-306 |
| | : | |
| AN ATTORNEY AT LAW | : | |
| | : | DISSENT |
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To the Honorable Chief Justice and Associate Justices of the Supreme Court of New Jersey.

I must respectfully dissent from the majority's recommendation of discipline. My dissent, however, is confined solely to the quantum of discipline recommended, rather than to the Board's finding of unethical conduct. Those findings are supported by clear and convincing evidence.

Accordingly, with the Special Master and the majority, I conclude that, in the Simmons matter, respondent violated RPC 3.1 and 8.4(d); in the matter involving his conduct before the Wantage Municipal Court, respondent violated RPC 3.5(c) and RPC 8.4(d); in the matter involving his conduct in connection with proceedings before Judge Conforti, respondent violated RPC 3.3(a), 3.5(c) and 8.4(d); in the matter involving his conduct in connection with Judge Conforti's law clerk, respondent violated RPC 3.2 and 8.4(d); in the matter before Judge Goldman in the Allentown Borough Municipal Court, respondent violated RPC 3.5(c) and 8.4(d); and in the ethics proceedings, respondent's lack of cooperation and

abusive behavior toward the presenter violated RPC 3.5(c) and RPC 8.4(d). Beyond all of the findings, I conclude that respondent's conduct throughout these proceedings, both before the Special Master and before this Board, clearly and convincingly demonstrates an appalling disrespect for the judiciary and the judicial process. The attitudes that respondent projected toward the Special Master and this Board lead me to the conclusion that even the stern discipline recommended by the majority does not adequately address the infractions respondent has so repeatedly committed.

I will not dwell on respondent's conduct in connection with the Simmons grievance. The majority has adequately addressed that conduct. The conduct was reprehensible and should not be tolerated.

I must, however, amplify upon the majority's recitation of respondent's conduct in the proceedings before Judge Dana, Judge Conforti, Judge Goldman, and the Special Master, at the pre-trial conference conducted by Judge Conforti's law clerk, and before this Board. A two-year suspension does not represent adequate discipline under these unusual and extreme circumstances.

Respondent came before Judge Dana in the Wantage Municipal Court to defend a client on a disorderly conduct charge. During the proceedings, respondent began to raise his voice at the witness, whereupon Judge Dana asked him to lower his tone of voice. Subsequently in the proceeding, respondent began to yell at the court and was found in contempt. The transcript appears to suggest that respondent baited Judge Dana, who was forced to have

respondent arrested. The flavor of what occurred may not have been fully captured in the transcript, but still that transcript suggests the extent to which respondent's conduct deviated from acceptable bounds as well as the patience exhibited by the court:

The Court: Mr. Grenell, you don't yell at me.

Mr. Grenell: Nobody's yelling at you, Your Honor.

The Court: You are, you're in contempt of Court.

Mr. Grenell: And now what?

The Court: I am going to direct the officer to arrest you.

Mr. Grenell: Oh. You're going to have him cuff me behind my back, Your Honor?

The Court: Mr. Grenell, the way you're acting tonight, I most certainly am.

Mr. Grenell: I don't know what your Honor speaks of.

The Court: Mr. Grenell--

Mr. Grenell: Tell this man to unhand me, Judge.

Court Officer: Just relax.

The Court: Mr. Grenell--

Mr. Grenell: Tell him to unhand me.

The Court: Mr. Grenell--

Mr. Grenell: Oh my God, they pulled the chair out from under me, Judge.

The Court: Mr. Grenell--

Mr. Grenell: I never saw anything like this.

The Court: Mr. Grenell, that was a weak attempt at a grandstand move.

Mr. Grenell: How would your Honor know that?

The Court: Because I just observed it, Mr. Grenell.

Mr. Grenell: And you can tell what--

The Court: I most certainly could.

Mr. Grenell: What did I do?

The Court: Oh, Mr. Grenell, please leave the courtroom.

The incident continued and Mr. Grenell was handcuffed. Eventually, Judge Dana placed the following statement on the record:

> Well, I think it's appropriate to have the record reflect that I just went to the Court Clerk's office that is connected to the courtroom and spoke to Mr. Grenell. I'm not sure if my characterization of speaking to Mr. Grenell is entirely appropriate because it's quite obvious that Mr. Grenell was totally, totally out of control.
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> In my fifteen or sixteen years as a Municipal Court Judge, I have never seen an attorney act in the manner in which Mr. Grenell acted. And Mr. Baker, I found your attorney's conduct to be atrocious.

Eventually, respondent's client found it necessary to apologize to the court for respondent's conduct.

In his testimony before the Special Master, Judge Dana, a Municipal Court judge since August 1973, commented that respondent had attempted, with his tone of voice and demeanor ". . . to intimidate everyone who is involved in the case, intimidate myself as the Judge, intimidate the witnesses who were attempting to put the case in for the State ..." whereas all that he, as presiding judge, was attempting to do was have respondent calm down and lower his voice. Ultimately, Judge Dana testified that respondent's

conduct had the effect of upsetting and indeed even scaring the court (2T121).[1]

Indeed, Judge Dana specifically concluded that respondent had attempted "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).

Respondent's conduct before Judge Conforti was not better. In that matter, the court had called counsel into its chambers to review the file before the hearing. Respondent, in his challenge to the court's jurisdiction, was rude and left the judge's chambers against the wishes of the court. Judge Conforti then heard the case in his courtroom, but respondent interrupted the proceedings by leaving the courtroom. I will not focus upon the substance of respondent's argument before Judge Conforti, but on the manner in which he comported himself before the court. Exhibit C-26 can leave no doubt as to how disrespectfully respondent treated the court. The following exchange is instructive:

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| The Court: | There are two issues to be addressed as I understand from a conference. Those issues concern rental value with the Estate property.<br><br>Mr. Grenell? |
| Mr. Grenell: | I am sorry? |
| The Court: | Please remain at the counsel table. Are you having a problem, Mr. Grenell? |

[1] For the sake of simplicity, the references to transcripts are the same as those found in the majority's decision.

Mr. Grenell: I didn't know there was ever a requirement that I had to stay at a counsel table.

The Court: Are you leaving then voluntarily?

Mr. Grenell: I have trouble with the word 'voluntarily'. Yes, of course I am leaving voluntarily.

The Court: The matter will proceed without you.

Mr. Grenell: It's proceeding virtually ex parte. I know nothing.

The Court: Mr. Grenell?

Mr. Grenell: I can't speak?

The Court: If you continue this conduct, I am going to be forced to refer this matter to the District Ethics Committee.

Mr. Grenell: I am speaking on behalf of my client in a court of law, in the State of New Jersey, and you're going to refer the matter to the Ethics Committee? As your Honor wishes. The record will reflect what occurred here today, your Honor. I am doing nothing adverse.

The Court: You walked away from the counsel table without the permission of the Court.

Mr. Grenell: I had no idea I needed the Court's permission to move anywhere in this world.

The Court: Mr. Grenell--

Mr. Grenell: I did so at my own risk, not at the risk of enraging the bench.

The Court: If you wish to, I will have you removed from the Court.

Mr. Grenell: I will voluntarily leave the courtroom. I don't want to be removed from the courtroom certainly. (emphasis supplied).

[Exhibit C-26, at 8 to 10.]

Respondent then left the courtroom.

Subsequent to respondent's departure, both opposing counsel placed comments on the record about respondent' conduct. Counsel

Mc Dermott characterized that conduct as ". . . obnoxious, abrasive to your Honor . . ." and opined that it appeared that respondent "was trying to obstruct this matter." Counsel Paparazzo stated that he had been confronted by respondent and that he had found it necessary to ask a sheriff's officer to come to court because he was afraid that there would be a confrontation between counsel.

Closely akin to this conduct was respondent's conduct before Judge Goldman. The Special Master, commenting upon that conduct, observed:

> Judge Goldman felt, because of what Mr. Grenell was doing, it would be inappropriate to continue with the matter on March 15 and, therefore, adjourned it so that she could take it on a day and a time when there was no one in the courtroom.
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> She testified--and this was supported by her Clerk, Helen Dwyer, who has been a Municipal Court Clerk for 18 years--that it was obvious to each of them that Mr. Grenell was grandstanding to the audience and Judge Goldman felt that this had the potential for a detrimental effect on any other cases that she might hear that day.
> [6T21 to 22.][2]

The Special Master made extensive findings with regard to respondent's conduct before Judge Goldman, including his having engaged in shouting at the court and disobeying the court's request to return to counsel table. The Special Master found that one member of the audience at this point commented "This is like a circus." The majority has adequately addressed the snoring incident. There can be no doubt that respondent's conduct fell shockingly short of what should be expected of members of the bar.

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[2] 6T refers to the transcript of June 2, 1990 before the District X Ethics Committee.

Judge Goldman, just as Judges Dana and Conforti, deserved and had a right to expect better. Lawyers should never comport themselves in a fashion to project the air that the proceedings in which they are involved are akin to a circus. Instead, our disciplinary rules codify an attorney's duty not to disrupt a tribunal or to conduct himself or herself in a fashion prejudicial to the administration of justice.

During that portion of the hearing below that addresses respondent's conduct before Law Clerk Donovan, testimony was received that respondent used obscene language towards his adversaries. It is not useful to repeat the exact words, albeit they appear in the transcript. The law clerk, albeit obviously young in the practice, ". . . just couldn't believe an attorney would speak to another attorney in that manner" (2T127). Respondent's conduct in the matters dealing with Judge Dana and Judge Conforti closely paralleled the attitude projected in his dealings with the law clerk. At one point ". . . he began to scream and yell and stormed off . . ." (2T138). Eventually, the situation became so strained that the law clerk was forced to comment, "Mr. Grenell, I am not going to conference any cases you are involved in because of the way you are acting . . ." (2T139).

Regrettably, the manner in which respondent comported himself before Judge Dana, Judge Conforti, Judge Goldman, and Law Clerk Donovan closely paralleled the manner in which he comported himself in connection with the ethics proceedings. Although an attorney for respondent appeared at the proceedings on Monday, March 26, to

request an adjournment--which request was denied--respondent made no appearance. Respondent did appear on April 2. The record reflects that, while the presenter was in the courtroom on that day, respondent attempted to provoke the presenter utilizing "a combative, aggressive tone of voice . . . ." The presenter recalled that conversation as follows:

> During the course of his conversation with me, he called me a jelly fish without a backbone. He asked me how the railroad was, inferring not only to these proceedings, but he was referring to my court in Roxbury Township where I am a Municipal Court Judge, where he inferred I railroad everybody. In effect, he said that. . . .

The presenter further indicated that respondent had referred to him as a "sniffling dog" and stated, "I know what a scum bucket you can be." It appears that, eventually, respondent left the April 2 hearing.

The matter next came before the Special Master on April 30. On that occasion, Mr. Grenell was present throughout. His conduct was reprehensible. At page 4 of the transcript, addressing the Special Master, respondent questioned "Hey, do I have to bother to stay here? Is there any point to my being here?" (5T4).[3] On the same page, he characterized the presenter as a "lunatic." After the Special Master declined respondent's request to take his jacket off, the Special Master asked him not to shout. Respondent answered, "I am not shouting. I will step back in the room, Father." (Emphasis added) (5T6). Shortly thereafter, he posed the following rhetorical question to the Special Master, "How about

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[3] 5T refers to transcript of April 30, 1990 before the District X Ethics Committee.

now? This is how I--this is what this case has been about, the fact that I can't speak in a courtroom in this State." Respondent then characterized the proceeding as a "farce" (5T8). Subsequently, the court granted respondent's request to remove his jacket. After thanking the court, respondent commented "I could ask to take off my shirt but I have decided to keep my shirt on."

Thereafter, respondent questioned why a court attendant was present, and the following exchange ensued:

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| Mr. Grenell: | Thank you. You are not going to stop me, I trust. You are going to stop me from speaking?<br><br>I'm going to be gagged again?<br><br>The last time I spoke in a voice that the Judge found displeasing I was arrested and dragged out of the courtroom in cuffs. That's not going to happen here, is it? Is that why this officer is here in blue? Is that why this fellow--who is this officer? |
| Mr. Scheu: | Scheu. Do you want me to spell it? |
| Mr. Grenell: | S-C-H-E-U. I spell real good. I prefer you stay out of my record. You just butt out. |
| Hearing Officer: | Mr. Grenell, that's enough. |
| Mr. Grenell: | I don't want this man in here. These are confidential proceedings. |
| Hearing Officer: | You have nothing to say about this, Mr. Grenell. |
| Mr. Grenell: | Who does? |
| Hearing Officer: | I do. |
| Mr. Grenell: | Where did you get the power? |
| Hearing Officer: | You have now made a record that a Sheriff's officer of Morris County-- |

Mr. Grenell: This is stupid. Can I bring other people in here?

One second. I want to get a crowd.

Can you come in here and sit down?

The Public: I am not coming in here.

Mr. Grenell: Please do.

Hearing Officer: Do you want to shut the door, Mr. Grenell, please.

Mr. Grenell: No, I don't. I don't do that. I don't do windows either.

Hearing Officer: Officer Scheu, would you please shut the door.

Officer Scheu can do that.

Mr. Grenell: I don't want the door closed. I want the door open.

Who is running this show anyway? Who is running this legal system?

Hearing Officer: I understand the Supreme Court of the State of New Jersey.

Mr. Grenell: The Supreme Court of the State of New Jersey, if they knew what was going on in this room, they would be ashamed. If they knew that Mr. Dunne was producing perjured witnesses, they would be ashamed and they will see this eventually because I can see where your Honor is headed and they will get to see this and I can't wait.

I need a minute. How much is this guy getting paid, Mr. Scheu? How much does Mr. Scheu make an hour? Ten bucks an hour? Fifteen bucks an hour?

How much money has the State wasted prosecuting me for pointing out that the legal system in this State is in a state of collapse, which you can read in any

> newspaper, of course. Now we are going to find out exactly why.
> [5T14 to 16.]

Shortly thereafter, when he addressed the Special Master, respondent observed:

> I am doing all this in the hope that at some point -- somewhere along the line I am going to pick up a Judge -- one Judge is going to see what a farce is going on here and an inane farce, what a railroad is being run, what a sham, the allusion [sic] of justice, no effort to follow the law at all . . .
> [5T18 to 19.]

Respondent then complained:

> This is tiring. I want to go see Teenage Mutant Ninja Turtles. My five-year-old kid is being denied Turtles. He wanted this over by two. He wanted me home by two.
> [5T21.]

And finally, respondent observed, in part:

> Wait until we see what else wasn't checked, assuming your Honor won't stop this railroad train right now because when your Honor sees, it's going to be an embarrassment for the entire bench and bar of this State how Mr. Dunne uses his office as a member of an Ethics Committee of the Supreme Court to carry out his own personal vendetta against me because he doesn't like my tone of voice either.
> [5T23.]

Respondent's attitude reflected in the record before the Special Master was also evident in his appearance before this Board. Indeed, in deciding to leave this Board's proceedings, he announced:

> I'll be glad to leave. In fact, I prefer to leave. It's obviously the same railroad that I was running into below.

Before he left, however, while respondent was sitting next to counsel, the following significant question was posed and answer was given:

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| Board Member: | Does your client feel that his conduct was appropriate? I'm asking specifically because I think it does bear -- do you take the position as you appear before us that your client's conduct before Judge Gascoyne on April 30, 1990 was appropriate? |
| Counsel: | Yes. |

* * *

Discipline is generally regarded as non-punitive in its essence. Its purpose is to protect the public against members of the bar who are unworthy of the trust and confidence that is essential to the relationship of attorney and client. In re Introcaso, 26 N.J. 356, 360 (1958). The severity of discipline imposed must comport with the seriousness of the ethical infractions. In re Nigohosian, 88 N.J. 308, 315 (1982).

Lawyers have a special responsibility, as officers of the Court, to conduct themselves with personal dignity and respect for the judicial process. This is essential if the integrity of our system is to be preserved. If lawyers are unwilling or unable to preserve that dignity, it cannot be possibly expected that the trust and confidence of the public will be maintained. In In re Vincenti, 92 N.J. 591, 603 (1983), the Court set down a requirement that ". . . lawyers display a courteous and respectful attitude not

only towards the court but towards opposing counsel, parties in the case, witnesses, court officers, clerks--in short, towards everyone and anyone who has anything to do with the legal process. Bullying and insults are not part of lawyer's arsenal."

The Court continued:

> The prohibition of our Disciplinary Rules against 'undignified or discourteous conduct . . . degrading to a tribunal' DR 7-106(C)(6), is not for the sake of the presiding judge but for the sake of the office he or she holds.
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> Respect for and confidence in the judicial office are essential to the maintenance of any orderly system of justice. This is not to suggest that a lawyer should be other than vigorous, even persistent, in the presentation of a case; nor is to overlook the reciprocal responsibility of courtesy and respect that the judge owes to the lawyer. Unless these respective obligations are scrupulously honored, a trial court will be inhibited in performing two essential tasks: sifting through conflicting versions of the facts to discover where the truth lies, and applying the correct legal principles to the facts as found. Under the best of circumstances these tasks are difficult; without an orderly environment they can be rendered impossible.
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> > Unless order is maintained in the courtroom and disruption prevented, reason cannot prevail and constitutional rights to liberty, freedom and equality under law cannot be protected. The dignity, decorum and courtesy [that] have traditionally characterized the courts of civilized nations are not empty formalities. They are essential to an atmosphere in which justice can be done. [Code of trial Conduct §17 (American College of Trial Lawyers 1983).]
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> [In re Vincenti, supra, 92 N.J. at 603-04.]

See also In re Friedland, 92 N.J. 107 (1983).

Just as attorneys have an obligation to foster the respect and to preserve the dignity of courts before which they practice, those privileged with a license to practice law, too, have an obligation to respect and cooperate with the ethics system. No Special

Master, Ethics Panel or Presenter should ever be forced to endure the indignities that this Special Master and Presenter were forced to accept. Their patience was tested beyond reasonable bounds. The manner in which they conducted themselves under the most extreme of circumstances deserves approving comment.

I view respondent's conduct as deplorable. It reflects a shocking disregard of professional standards. By so directly challenging the tribunals before which he appeared, respondent attempted to bring those tribunals into disrepute. In a most direct way, respondent has challenged the judicial process and the administration of justice. He has directly challenged the bench, as well as the public it serves.

My colleagues have recommended a two-year suspension. I believe that that sanction neither adequately redresses the wrongs that respondent has committed nor adequately protects the public we all serve. That sanction, although stern, does not fully acknowledge the damage that respondent has done to the system. Courts are not circuses. Nor were the bodies before whom respondent appeared railroads. The judges who have brought these complaints were right to have done so. They must have recognized that, if conduct such as that exhibited by respondent were to be tolerated, the system could grind to a halt.

This is not a question of impassioned advocacy or of going a little too far in the interests of a client. This is an example of an attorney abusing the privilege of his license by repeatedly abusing the courts before which he appeared and, then, to make

matters even worse, doing the very same thing before the ethics tribunal before which he was required to appear.

Our cases tell us that contrition may be a mitigating circumstance in arriving at appropriate discipline. Vainly, I have searched this record for an indication of contrition or even an adequate statement that respondent recognizes that he acted inappropriately in so many forums. But even before this Board, respondent persisted in asserting that he was being railroaded. To the contrary, this record adequately demonstrates the fairness of the proceedings below and the indulgent manner in which so many attempted to deal with respondent's conduct.

Not much comes before this Board that surprises me anymore. Frequently, the Board sees matters of well-meaning lawyers who, by the press of their profession, have let some element of their practice slip. Less frequently, we see attorneys who, for whatever reason, breach the faith invested in them by their license but, in most of those instances, there is recognition of the wrongdoing committed and contrition for the misconduct. Sometimes, there is dishonesty, where the attorney, knowing of the gravity of the conduct, simply walks away from the profession. But never have I seen the arrogance of an attorney who, after doing so much damage to so many courts and ethics tribunals, refuses to admit that he has done wrong.

The public must be protected from this respondent; clients should never be placed in a position where they must apologize to a court for what their attorney has done. The system must be

protected from this respondent; judges should not have to resort to have counsel handcuffed or to endure repeated belligerence. The ethics process must be protected from this respondent; ethics presenters should not be placed in a position of being called scumbuckets or worse. Hearing officers should not have heaped upon them the comments with which Judge Gascoyne was greeted. And this Board is entitled to greater respect than was exhibited by this respondent.

The majority, in addition to recommending a two-year suspension, has also recommended that, at the conclusion of his suspension, respondent be placed on disability inactive status. Unfortunately, there is nothing in this record sufficient to warrant that recommendation. Indeed, this record is devoid of medical mitigation. Although respondent's counsel stated that respondent suffered from multiple sclerosis, no claim was made that his unfortunate medical condition could have contributed to respondent's repeated conduct. No doctor testified. No medical reports were submitted. It is not for this Board to search for mitigation beyond our record. The burden of proving medical mitigation falls on respondent and, in this matter, respondent made no attempt to explain his conduct on the basis that his medical condition may have been its cause. Were the record to have been otherwise, were the respondent to have produced a medical explanation by competent evidence, I might have been able to join my colleagues. But he did not.

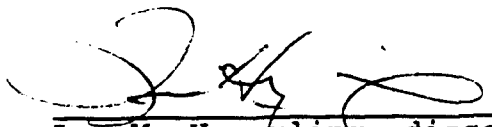
The majority has indicated that it is perplexed by respondent's ". . . continuing offensive behavior and lack of cooperation. . . ." And so too am I. But perplexed though we may be, we must confine ourselves to what is before us. And what is before us is a record in which respondent's counsel has not pressed a medical defense. Instead, what is before us is a record in which, in unmistakable terms, respondent, through his counsel, does not even concede the impropriety of the proven misconduct.

In very unusual circumstances the Court has, even when a disciplinary matter came before it after detailed consideration by a District Ethics Committee and by the Disciplinary Review Board, directed that the matter be remanded on the question of medical mitigation and permitted a respondent to supplement the record with proofs that he or she felt appropriate. I have no way of knowing whether this respondent would avail himself of that opportunity, if given the chance. But short of that opportunity being given and taken, this matter must now be judged on the record as it stands. In the event that respondent is afforded the opportunity to supplement this record, he should clearly be under suspension. The basic sanction recommended by the majority should not be delayed.

For all of the reasons expressed in this dissent, I am compelled to recommend a sanction more severe than that recommended by the majority. Although virtually all of this dissent has addressed respondent's misconduct before various judges and the disciplinary system, in reaching my conclusion I have seriously considered respondent's grave misconduct in the Simmons matter.

Respondent acted in a fashion that is totally unacceptable and that cannot be tolerated. That conduct alone would warrant a suspension, but when that conduct is coupled with the disrespect that respondent exhibited to the courts before which he appeared and before the Special Master who heard this matter, I am forced to recommend that respondent be disbarred. I would only temper my recommendation were the record to have been sufficient to afford a medical explanation for respondent's misconduct. This record does not afford that latitude.

Respectfully submitted,



Lee M. Hymerling, dissenting member
Disciplinary Review Board