SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 16-250
District Docket No. IIA-2014-0007E

IN THE MATTER OF	:
MICHAEL E. RYCHEL	:
AN ATTORNEY AT LAW	:

Decision

Argued: November 17, 2016

Decided: April 10, 2017

Kevin P. Kelly appeared on behalf of District IIA Ethics Committee.

Respondent appeared pro se.

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

This matter was before us on a recommendation for a reprimand filed by the District IIA Ethics Committee (DEC). The complaint charged respondent with violations of RPC 3.2 (a lawyer shall treat with courtesy and consideration all persons involved in the legal process) and RPC 8.2(a) (a lawyer shall not make a statement that the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the

qualifications of a public legal officer). We determine to impose a reprimand.

Respondent was admitted to the New Jersey bar in 1992. He has no prior discipline or pending matters.

On November 7, 2012, in the course of communicating with the Office of Attorney Ethics (OAE) about grievances that he had filed against, his former employer, Stanley Marcus, and others, respondent sent two e-mails to the OAE. The first e-mail was sent to the OAE investigator, Scott Fitz-Patrick; the second e-mail was sent to OAE Director Charles Centinaro.

The e-mail to Fitz-Patrick stated:

> Hi Scott: Given my spare time I went through my evidence files. I had discovered something that I did not share with you, but may have some relevance if in [sic] the event you're looking to do justice. Attached hereto you'll find a memo that was circulated around the office post JH's alleged "going crazy." Take note that they make fun of this guy because he opposes/es [sic] "State Offenses," "Insurance Fraud, and "Ethics Violations." Do me a big favor and tell Director Centinaro, THANKS FOR THE BACK UP!!!!!!!!!!!!!!!!!!! I really appreciate his f*****g lack of concern. THIS IS A F*****G ATROCITY THAT **AN HONEST LAW ABIDING ATTORNEY SHOULD HAVE TO GO THROUGH THIS S**T!!!!!! TELL CHARLES CENTINARO THAT I SAID TO GO F**K HIM SELF [sic]!!!!!!!! QUOTE ME IN YOUR REPORT!!!!!! NO OFFENSE AGAINST YOU, I KNOW YOU'RE A DECENT HONEST GUY.**
> **mIKE RYCHEL**
>
> [Ex.AA.]

The e-mail that respondent sent to Director Centinaro just a few minutes later stated:

> Hey Charlie, here's an example of what you're [sic] f*****g AMBULANCE CHASING attorneys and their minions do to honest hardworking attorneys who comport their conduct to the RPC's, 2C and the IRS code. Thanks so much for the back up [sic]. Look personally between me and you GO F**K YOURSELF!!!!!!!!!!!!!!!!!!!!
> Mike Rychel
>
> [Ex.BB.]

Prior to the DEC hearing, respondent had filed a motion to dismiss the complaint. In an order dated January 29, 2016, the panel chair dismissed count two of the complaint, charging a violation of RPC 8.2(a), as inapplicable. The remaining charge, however, remained intact.

Respondent testified at the DEC hearing about the reason for his upset with both Fitz-Patrick and Director Centinaro. He perceived system-wide corruption by ethics officials who handled his claims of wrongdoing against others, and was troubled that his grievances had been dismissed.

Just prior to the DEC hearing, respondent executed an apparently unsolicited, undated, and certified stipulation of facts in which he admitted certain misconduct.

Specifically, he admitted that the second e-mail, to Director Centinaro, contained "emotive language in a challenging

tone personally directed at a person obviously involved in the legal process which evidenced a clear lack of civility and courtesy, thus violating RPC 3.2." At the DEC hearing, respondent once again stipulated that his e-mail to Director Centinaro violated RPC 3.2:

> And I stipulated that the language was emotive, that it was discourteous, it lacked civility. Any further inquiry, whether or not it is abusive, whether it's lewd, whether it's obscene, I believe is superfluous and goes beyond the parameters of the Rule in terms of proving the necessary -- the necessary proofs of a violation of a 3.2.
>
> [T15-21 to T16-2.][1]

In fact, respondent testified that he wanted Director Centinaro to receive the message contained in his e-mail to Fitz-Patrick. Out of concern that Fitz-Patrick might not deliver it for him, respondent decided to e-mail Director Centinaro directly.

The stipulation did not address the communication to Fitz-Patrick as violative of RPC 3.2. At the DEC hearing, respondent asserted two reasons that he believed that e-mail did not violate the Rule. First, he and Fitz-Patrick had developed a friendly relationship over the course of the investigation into

[1] "T" refers to the February 12, 2016 DEC hearing transcript.

his grievances against others, such that colorful language was not out of bounds in their dealings with each other. Rather, he "was just using language that [he] always used with Scott. It was no big deal. He's not a Girl Scout, I can assure you that." Secondly, respondent argued, the "go f***k yourself" language was not directed at Fitz-Patrick, whom he called a "decent, honest guy." Rather, the ire contained in the Fitz-Patrick e-mail was focused on Director Centinaro.

Respondent and the presenter engaged in a colloquy about respondent's belief that he was confronting perceived corruption by sending the e-mails:

> [RESPONDENT] Scott and I would converse, you know, that language was not uncommon. And if you really -- if you read like the content, you really -- and you read the context of what I'm saying, I'm not attacking Scott. I'm not attacking Scott.
> Q. Who did Scott work for?
> A. The Office of Attorney Ethics.
> Q. Who's the director?
> A. Charles Centinaro. That's who I was attacking.
> Q. So you're telling him to tell his boss to go f**k him --
> A. Yes.
> Q. -- self?
> A. Yes, I'm --
> Q. And you think that was civil?
> A. I think under the circumstances it was the correct thing to do.
> Q. It was the correct thing to do. So you don't feel bad about that?
> A. No, I don't.
> Q. And you don't feel bad about telling Director Centinaro to go f**k himself?

A. No, I don't.
Q. Okay. There's -- there's no remorse that you feel for this?
A. None whatsoever. In fact, I'm proud.
Q. You're proud of it?
A. Yes.

[T25-11 to T26-14.]

The presenter argued below that the Fitz-Patrick e-mail, too, violated RPC 3.2 because it contained the same language and message as in the Centinaro e-mail, to which respondent admitted a violation:

> How is this remotely something that would be considered civil and courteous? And I think it's a discourtesy to Mr. Fitzpatrick, [sic] ultimately to Mr. Centinaro. The fact that he didn't tell Scott to go f**k himself, and forgive me for the -- I -- I have difficulty with this case, as you can imagine, as the presenter. I'm uncomfortable even saying that word in a courtroom.
>
> * * *
>
> And I think the second email confirms that this was rage on [respondent's] part and he decided to use the language of the street, the language of the general, the language of the gutter. Not the language of an attorney addressing people involved in the legal process.
>
> So that's why I believe it's as to both, and the count goes as to both [e-mails]. It's a violation either -- either way, but I think it's a violation that he should be disciplined as to both of the communications.
>
> [T22-19 to T23-14.]

In an undated trial brief to the panel, the presenter recommended the imposition of a reprimand, citing In re Arenstein 170 N.J. 186 (2001), where the attorney was reprimanded for a violation of RPC 3.2. During a matrimonial deposition, Arenstein physically removed the court reporter's hands from her transcribing machine when she continued to type after he instructed her to stop.

Although respondent urged the imposition of an admonition, he was willing to accept a reprimand, stating:

> It really doesn't matter, I -- you know, I don't practice law. The only thing -- you know, I would never practice law again after what happened to me here . . . .
>
> * * *
>
> If open [sic] up your mouth and you tell the truth about what happens, your career is over. . . . I have no intention -- whether it's -- and I don't mean to be disrespectful in any way, but the real truth is this: Whether it's disbarment or abonish -- abonishment --
>
> [PANEL CHAIR] MR. ROTH: Admonishment, sir.
>
> MR. RYCHEL: Admonishment, it doesn't affect me.
>
> [T43-12 to T44-10.]

A short while later, respondent added:

> So my position is this, for the -- for other lawyers in this state, so that they maybe don't lose their careers and they see that there's some solace, that there's some --

there's some harbor for their ship, do an admonishment.

[T47-24 to T48-3.]

The DEC accepted respondent's stipulated violation of RPC 3.2 as to the Centinaro e-mail, and found that his e-mail to Fitz-Patrick also violated the Rule, as it contained the very same offensive language to which he admitted a violation in the Centinaro e-mail.

The panel cited two aggravating factors: respondent's lack of concern about the sanction to be imposed (an admonition or reprimand); and his lack of remorse for his actions. In mitigation, respondent had no prior discipline.

The panel recommended the imposition of a reprimand.

* * *

Following a de novo review of the record, we are satisfied that the DEC's finding that respondent's conduct was unethical is fully supported by clear and convincing evidence.

The Centinaro e-mail contained vulgar, highly offensive language, directed at a significant official in the Court's attorney discipline system. To respondent's credit, he ultimately admitted, in a written stipulation, that his actions in that regard were discourteous and inconsiderate, in violation of RPC 3.2. Nevertheless, in a brief to us, respondent again suggested that the complaint against him should be dismissed, as

having been filed in bad faith in order to either silence his allegations of corruption in the attorney discipline system or to retaliate against him for having alleged such corruption.

Although respondent admitted that the e-mail sent to Director Centinaro violated RPC 3.2, he took issue with the allegation that the Fitz-Patrick e-mail, too, violated the Rule. Respondent claimed that he and Fitz-Patrick enjoyed a rapport that permitted the use of foul and offensive language. Even if true, that argument misses the mark.

By instructing Fitz-Patrick in the first e-mail to tell Director Centinaro to go "F**K" himself, he intended for that vulgar and offensive comment to reach the Director. Incredibly, respondent testified that the reason he sent the second e-mail directly to Centinaro minutes later was out of concern that Fitz-Patrick might not relay his remarks to the Director for him. Respondent, thus, wanted to make sure that Director Centinaro received his message. Because both e-mails contained the very same offensive message, which respondent wanted to reach Director Centinaro, the first e-mail to Fitz-Patrick was equally as offensive as the second one to which respondent stipulated. We, thus, find a violation of RPC 3.2 as to both communications.

As noted earlier, the RPC 8.2(a) charge was dismissed, prior to the DEC hearing, as inapplicable. We agree with that determination.

Disrespectful or insulting conduct to persons involved in the legal process leads to a broad spectrum of discipline, ranging from an admonition to disbarment. See, e.g., In re Gahles, 182 N.J. 311 (2005) (admonition for attorney who, during oral argument on a custody motion, called the other party "crazy," "a con artist," "a fraud," "a person who cries out for assault," and a person who belongs in a "loony bin;" in mitigation, it was considered that the attorney's statements were not made to intimidate the party but, rather, to acquaint the new judge on the case with what the attorney perceived to be the party's outrageous behavior in the course of the litigation); In the Matter of Alfred Sanderson, DRB 01-412 (February 11, 2002) (admonition for attorney who, in the course of representing a client charged with driving while intoxicated, made discourteous and disrespectful communications to the municipal court judge and to the municipal court administrator; in a letter to the judge, the attorney wrote: "How fortunate I am to deal with you. I lose a motion I haven't had [sic] made. Frankly, I am sick and tired of your pro-prosecution cant;" the letter continued, "It is not lost on me that in 1996 your little

court convicted 41 percent of the persons accused of DWI in Salem County. The explanation for this abnormality should even occur to you."); In re Murray, 221 N.J. 299 (2015) (reciprocal discipline matter; reprimand for attorney who, in three separate court-appointed pro bono matters in Delaware over a two-year period, behaved discourteously toward the judge and repeatedly attempted to avoid pro bono court appointments there); In re Zeigler, 199 N.J. 123 (2008) (reprimand imposed on attorney who told the wife of a client in a domestic relations matter that she should be "cut up into little pieces . . . put in a box and sent back to India;" and in a letter to his adversary, accused the wife of being an "unmitigated liar" and threatened that he would prove it and have her punished for perjury; the attorney also threatened his adversary with a "Battle Royale" and ethics charges; mitigating factors included that the attorney had an otherwise unblemished forty-year ethics history, that he recognized that his conduct had been intemperate, and that the incident had occurred seven years earlier); In re Geller, 177 N.J. 505 (2003) (reprimand imposed on attorney who filed baseless motions accusing two judges of bias against him; failed to expedite litigation and to treat judges with courtesy (characterizing one judge's orders as "horse***t," and, in a deposition, referring to two judges as "corrupt" and labeling

one of them "short, ugly and insecure"), his adversary ("a thief"), the opposing party ("a moron," who "lies like a rug"); failed to comply with court orders (at times defiantly) and with the disciplinary special master's direction not to contact a judge; used means intended to delay, embarrass or burden third parties; made serious charges against two judges without any reasonable basis; made a discriminatory remark about a judge; and titled a certification filed with the court "Fraud in Freehold"; in mitigation, the attorney's conduct occurred in the course of his own child-custody case, the attorney had an unblemished twenty-two-year career, was held in high regard personally and professionally, and was involved in legal and community activities); In re Arenstein, supra, 170 N.J. 186 (reprimand imposed on attorney who, during a matrimonial deposition, physically removed the court reporter's hands from her transcribing machine when she did not accede to his demand that she stop typing; the reporter alleged that the attorney's behavior amounted to an assault; no charges were ever brought and the reporter was unharmed); In re Supino, 182 N.J. 530 (2005) (attorney suspended for three months after he exhibited rude and intimidating behavior in the course of litigation and threatened the other party (his ex-wife), court personnel, police officers, and judges; other violations included RPC

3.4(g), RPC 3.5(c), and RPC 8.4(d)); In re Rifai, 204 N.J. 592 (2011) (three-month suspension imposed on an attorney who called a municipal prosecutor an "idiot," among other things; intentionally bumped into an investigating officer during a break in a trial; repeatedly obtained postponements of the trial, once based on a false claim of an accident on the Turnpike; and was "extremely uncooperative and belligerent" with the ethics committee investigator; the attorney had been reprimanded on two prior occasions); In re Stolz, 219 N.J. 123 (2014) (three-month suspension for attorney who made "sarcastic," "wildly inappropriate, and "discriminatory" comments to his adversary, such as "Did you get beat up in school a lot?, because you whine like a little girl"; "Why don't you grow a pair?"; "What's that girlie email you have. Hotbox.com or something?"; "Why would I want to touch a fag like you?"; the attorney also lied to the court and to his adversary that he had not received the certification in support of a motion filed by the adversary; aggravating factors were the attorney's lack of early recognition of and regret for his actions; violations of RPC 3.3(a)(1), RPC 3.3(a)(5), RPC 4.1(a), RPC 8.4(a), and RPC 8.4(d); no prior discipline); In re Van Syoc, 216 N.J. 427 (2014) (six-month suspension imposed on attorney who, during a deposition, called opposing counsel

"stupid" and a "bush league lawyer;" the attorney also impugned the integrity of the trial judge, by stating that he was in the defense's pocket, a violation of RPC 8.2(a); we found several aggravating factors, that is, the attorney's disciplinary history, which included an admonition and a reprimand; the absence of remorse; and the fact that his misconduct occurred in the presence of his two clients, who, as plaintiffs in the very matter in which their lawyer had accused the judge of being in the pocket of the defense, were at risk of losing confidence in the legal system); In re Vincenti, 92 N.J. 591 (1983) (one-year suspension for attorney who displayed a pattern of abuse, intimidation, and contempt toward judges, witnesses, opposing counsel, and other attorneys; the attorney engaged in intentional behavior that included insults, vulgar profanities, and physical intimidation consisting of, among other things, poking his finger in another attorney's chest and bumping the attorney with his stomach and then his shoulder); and In re Vincenti, 152 N.J. 253 (1998) (disbarment for attorney described by the Court as an "arrogant bully," "ethically bankrupt," and a "renegade attorney;" this was the attorney's fifth encounter with the disciplinary system).

We recognize that these cases involve discourteous conduct to judges and to parties in the context of active ongoing

litigation – usually in a courtroom. However, it matters not that respondent did not direct his vulgarity and ire to a judge sitting on a bench or to an adversary while in a courtroom. The Court has made clear its expectation that all attorneys will interact professionally and respectfully with all persons involved in the administration of justice, regardless of whether the interaction occurs in a courtroom or simply in the context of a legally disputed matter. The Court specifically addressed the issue in In the Matter of Application of McLaughlin, 144 N.J. 133 (1996), a bar admissions case.

In that case, the candidate had become flippant and sarcastic with members of the Board of Bar Examiners during a character fitness hearing. Moreover, in a letter to the Clerk of the Court, complaining of the delay in a determination of his matter, the candidate used demeaning and "vituperative" language to describe the Assistant Secretary of the Board of Bar Examiners, and accused him of "ill-disguised hostility towards [his] application." Id. at 146. The Clerk of Court responded to his letter, reassuring him that the matter had not been unduly delayed and expressing his effort to focus on the candidate's inquiry and not his "hyperbole and intemperate remarks." In response, however, the candidate continued to press with intemperate and insulting remarks, closing his letter with

"[h]ow's that for intemperate hyperbole?" The Court determined that the candidate's flip, sarcastic and snide correspondence with Board of Bar Examiners personnel was evidence of his "lack of respect for the administration of justice," bordering on contempt. Id. at 152-153. The Court noted, "[o]fficers of the court should not be required to fight through insults and gratuitous accusations of bias in order to preserve their objectivity and fairness . . . . [Such] vituperative behavior creates an atmosphere that can threaten the proper discharge of court functions, including the supervision of bar admissions, and ultimately disserves the public." Id. at 154. The Court determined to withhold McLaughlin's certification, without prejudice, to present evidence of rehabilitation.

We now turn our attention to the specific discipline to be imposed for respondent's misconduct.

Respondent's conduct can be distinguished from the admonition cases, which are less serious. In Gahles, although the attorney called the other party such things as a "fraud," "crazy," and someone who "cries out for assault," those statements were made to acquaint a new judge with what Gahles considered to be a party's outrageous behavior. In Sanderson, although the attorney made discourteous and disrespectful remarks to a municipal judge, he did not use highly offensive

language of the sort to which respondent resorted in this matter.

To put respondent's actions in perspective, however, we note that his brief rant was limited to two e-mail communications, sent minutes apart, to vent his anger toward the titular head of a governmental entity whom he believed was corrupt. Respondent's actions were no more egregious than those of the attorney in Zeigler (reprimand). There, in a domestic relations matter, the attorney told the wife of his client that she should be "cut up into little pieces . . . put in a box and sent back to India," and called her an "unmitigated liar" who would be punished for perjury. Mitigation included Zeigler's forty-year unblemished ethics history, his remorse, and the passage of time.

In similar fashion to respondent's claims of corruption, the attorney in Geller (reprimand) accused two judges of bias and corruption, characterized one judge's orders as "horse***t," and the other judge as "short, ugly and insecure." Geller's actions were, however, more pervasive than respondent's. He referred to his adversary as a thief, the opposing party as a moron, and he demeaned another litigant. Geller "defiantly" failed to comply with court orders and the disciplinary special master's admonition not to contact a judge. Mitigation included

an unblemished twenty-two-year career, his involvement in the legal community and local civic activities, and the fact that the conduct occurred in his own child-custody case.

Arenstein, supra, 170 N.J. 186, cited by the presenter, is arguably more serious than the present case, inasmuch as the discourteous conduct in that matter involved a physical touching – a borderline assault – when the attorney forcibly removed a court reporter's hands from her transcribing machine during a deposition.

The short suspension cases, Supino, Stolz, and Van Syoc, involved more extensive misconduct and additional infractions, while the attorney in Rifai had prior discipline, all elements not present here. The one-year suspension and disbarment in the Vincenti cases were based on conduct far more egregious than respondent's, and involved both a pattern of discourteous conduct and prior discipline.

There is, however, an aggravating factor for our consideration. Respondent displayed a belligerent lack of remorse when impuning the integrity of officials appointed by the Supreme Court. Respondent should take note that the entire tone of his e-mails was unprofessional, not simply the expletives contained in them.

We, however, reject another factor in aggravation that the DEC considered – that respondent did not care whether he received an admonition or a reprimand. Respondent admittedly was unconcerned about the quantum of discipline, because he no longer practices law. In our view, he should not be faulted simply because he confessed that he is not concerned about the sanction, especially when it is within a very limited range.

Respondent's lack of prior discipline in twenty-four years at the bar represents the only mitigating factor here.

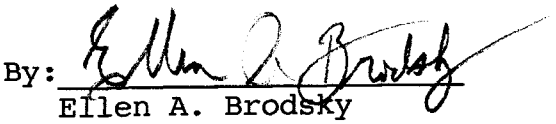
Although we are deeply troubled by respondent's behavior, on balance, we find that the aggravating and mitigating factors are in near equipoise. We, therefore, determine to impose a reprimand for respondent's misconduct.

Member Gallipoli voted for a three-month suspension.

Vice-Chair Baugh did not participate.

We further determine to require respondent to reimburse the Disciplinary Oversight Committee for administrative costs and actual expenses incurred in the prosecution of this matter, as provided in R. 1:20-17.

Disciplinary Review Board
Bonnie C. Frost, Chair

By: 
Ellen A. Brodsky
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Michael E. Rychel
Docket No. DRB 16-250

Argued: November 17, 2016

Decided: April 10, 2017

Disposition: Reprimand

Members	Reprimand	Three-month Suspension	Did not participate
Frost	X		
Baugh			X
Boyer	X		
Clark	X		
Gallipoli		X	
Hoberman	X		
Rivera	X		
Singer	X		
Zmirich	X		
Total:	7	1	1

Ellen A. Brodsky
Chief Counsel