SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 01-260

IN THE MATTER OF

MARIA P. FORNARO

AN ATTORNEY AT LAW

Decision

Argued: October 18, 2001

Decided: March 5, 2002

Timothy L. Barnes appeared on behalf of the District X 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 based on a recommendation for discipline filed by the District X Ethics Committee ("DEC"). The complaint charged respondent with *RPC* 1.7(b) (conflict of interest), *RPC* 3.3(a)(5) (failure to disclose a material fact to a tribunal), *RPC* 3.7(a) (lawyer may not act as advocate at trial where lawyer is likely to be a witness), *RPC*

5.5 (unauthorized practice of law) and *RPC* 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation). Before the DEC hearing, the presenter withdrew the charge of a violation of *RPC* 5.5.

Respondent was admitted to the New Jersey bar in 1989. She was suspended for three months, effective March 24, 1998, for various misconduct in four matters, including: gross neglect, lack of diligence, failure to communicate with clients, failure to communicate the basis of the fee, failure to turn over client's file upon termination of the representation, false statement of material fact to a tribunal, failure to cooperate with disciplinary authorities, conduct involving dishonesty, fraud, deceit or misrepresentation and false statement of material fact to disciplinary authorities. Respondent was also ordered to complete the Skills and Methods Course offered by the Institute for Continuing Legal Education and to practice under the supervision of a proctor for two years, upon reinstatement. *In re Fornaro*, 152 *N.J.* 449 (1998).

In 1999 respondent was reprimanded when, in one matter, she ignored her client's request for an accounting of services rendered and, in another matter, displayed lack of diligence. *In re Fornaro*, 159 *N.J.* 525 (1999).

Respondent was suspended for two years, effective December 15, 1999, where, in two matters, she was guilty of gross neglect, lack of diligence, failure to communicate and failure to provide a fee agreement; in one of the matters, respondent also failed to protect a client's interests upon termination of the representation and exhibited a pattern of neglect; in the

second matter, she also failed to cooperate with the ethics investigation. That matter proceeded by way of default. *In re Fornaro*, 163 *N.J.* 88 (2000).

* * *

Respondent represented [redacted] the husband in a divorce action in which custody of his five-year old son was at issue. The complaint alleged that, during the time of the representation, respondent had a romantic relationship with [redacted] and became so involved in his son's life that she was likely to be a material witness in the custody aspect of the divorce action. Respondent is charged with conflict of interest, failure to withdraw as an attorney, despite the likelihood of being called as a material witness, and misrepresentation to the court about her relationship with [redacted].

[redacted] was the plaintiff in a divorce action against his wife, [redacted] who was initially represented by Michael Rychel. The divorce complaint had been filed in early 1997. Custody of the parties' five-year old son, [redacted] and child support were contested issues in the case. [redacted] primary caregiver was Audrey Esposito, also known as "Nanny," who lived at the same apartment complex as [redacted]. [redacted] was the complex's superintendent.

According to [redacted] during the divorce action and after spending time with [redacted] began to talk about a woman named "Babe." [redacted] told [redacted] that Babe was a "nice lady" who lived at the same apartment complex as [redacted]. When [redacted] asked [redacted] to show

her Babe's apartment, he pointed out building 13, apartment 12A. [redacted] then questioned [redacted] about Babe, who was evasive and told her that Babe was a babysitter. [redacted] however, was concerned that someone she did not know was taking care of her young son. She was particularly apprehensive because [redacted] teacher had reported that he had been "acting out sexually" at school and [redacted] had alleged that either [redacted] or her mother was acting inappropriately in [redacted] presence.

At some point, [redacted] began to suspect that respondent was Babe. She based her suspicion on the following circumstances:

- A postal search revealed that respondent lived at building 13, apartment 12A, the apartment that [redacted] had identified as Babe's.
- Linda York, a teacher at Rainbow Montessori School, attended by [redacted] mentioned to [redacted] that a woman identified as Babe had attended a school conference with [redacted]. York's description of Babe was consistent with respondent's appearance.
- It appeared that respondent had become personally involved in the divorce proceeding.

[redacted] stated that [redacted] spoke of engaging in activities with his father and Babe, such as riding bicycles, playing basketball and having pictures taken with Dalmatians. According to [redacted] respondent attended [redacted] baseball games and a hockey game. Some of these events occurred while respondent was still representing [redacted] others afterward. [redacted] contended that, while still representing [redacted] respondent appeared at parents' night with him at [redacted] school and had appeared at another school that [redacted] attended. When [redacted] questioned [redacted] about respondent, [redacted] insisted that they were simply friends and denied

that respondent was Babe. Once respondent ceased representing him, however, [redacted] admitted that they had become romantically involved in December 1996, before the divorce complaint was filed, and that respondent was Babe. [redacted] testified that in March or April 1998, about the time that respondent was suspended, she saw respondent and [redacted] at the Mennan Arena, an ice-skating rink, watching [redacted] ice skate. At that time, [redacted] took photographs to obtain proof of the relationship between respondent and [redacted].

On May 23, 1997 Judge Stephen J. Schaeffer conducted a hearing on various emergent motions brought by the parties. At that hearing, the following exchange took place:

> Mr. Rychel: Another issue, Judge, is, I've asked counsel to provide me with the name, address, and telephone number of a material witness in this case by the name of Babe (phonetic), who the minor child is many times left with during the course of a day.
>
> The Court: Is that a babysitter?
>
> Ms. Fornaro: Judge --
>
> Mr. Rychel: I suppose -- well, supposedly, a tutor. . . . Your Honor, at this point I'd like to bring out to the Court that Miss Fornaro has very pointedly represented to me that Babe is the tutor, that there is a person --
>
> The Court: Is there a tutor?
>
> Mr. Rychel: -- Babe.
>
> Ms. Fornaro: There is no tutor for this child, Judge. Not to my knowledge. Is there?
>
> Mr. [redacted] No.

The Court: Is there somebody by the name of Babe? I don't care what she is; whether she's a tutor or babysitter.

Ms. Fornaro: There's a babysitter named Nanny, and I believe . . . that [redacted] helped pick out this babysitter . . .

Mr. Rychel: Your Honor, another thing I'd just like to point out to the Court, that this person called Babe showed up at the school for an interview. I do have witnesses that there is such a person. All I want is her name, address, so I can depose her. There are --

The Court: Why don't you give him the name and address?

Ms. Fornaro: I don't have one. . . .

Mr. Rychel: It came to my client's attention that the child was left in the care of --

The Court: Where --

Mr. Rychel: -- of Babe.

The Court: Excuse me. What's the name of this person?

Ms. Fornaro: Nanny is Audrey Esposito.

[Exhibit P-2, at 10-12]

On cross-examination, [redacted] stated that, for reasons that she did not know, her answers to interrogatories had not listed respondent as a potential witness.

[redacted] also testified at the ethics hearing. He confirmed that, during the course of respondent's representation, they were romantically involved. According to [redacted] there were times when he was busy and the babysitter was not available. On these occasions, respondent would be responsible for [redacted] care. [redacted] further confirmed that respondent

used the name "Babe." After [redacted] direct testimony, respondent declined to cross-examine him, representing that she would call him as her own witness during the presentation of her case. She did not do so, however.

[redacted] attorney, Michael Rychel, testified that, after [redacted] told him of the allegations about [redacted] acting out sexually and that a person unknown to her was babysitting her son, he asked respondent who Babe was. According to Rychel, respondent told him that there was no cause for concern and that Babe was a "college kid." Rychel added that, although on several occasions he asked respondent for Babe's name, she refused to give him that information, never denying that she had it. Rychel was interested in taking Babe's deposition to discover her observations of [redacted] and to determine if she might have been engaging in sexual activity in front of him.

After some time, Rychel, too, began to suspect that respondent was Babe. According to Rychel, respondent began to make vulgar attacks on [redacted] and repeatedly showed personal animosity toward her. When Rychel revealed his suspicions and suggested that she "back off" from the case, respondent replied, "so what? What if we were bike-riding? So what? What if we did see Dalmatians?" Rychel believed that respondent was admitting either that she was Babe or that she was involved in [redacted] ife. Rychel's suspicions increased when he learned from school officials that a woman identified only as "Babe" had accompanied [redacted] at a school meeting and that respondent fit the description. According to Rychel, after he warned respondent that he would bring people from the school to court to

identify her, respondent appeared in court with altered hairdo and makeup and a different style of dress.

Rychel opined that, at the motion before Judge Schaeffer to require respondent to identify Babe, respondent evaded the court's questions, deflecting the topic to the babysitter, Audrey Esposito. After that hearing, in several heated conversations, Rychel cautioned respondent that she was a material witness and that she should terminate her representation of [redacted]. Rychel filed a motion for respondent's removal, heard by Judge Conway[1] on May 30, 1997. Respondent, in turn, filed a cross-motion to have Rychel removed. At this hearing, Rychel indicated to the judge that respondent was romantically involved with [redacted] that he intended to call her as a witness in the divorce case and that he needed to take her deposition as soon as possible. In reply, respondent stated as follows to Judge Conway:

> Judge, yes, I know my client. Yes, I live in the same apartment complex where he is. Yes, I know him as my resident manager. Does that mean I can't represent him? I think not, Judge. If that were the case, I could never represent anybody that I know on a personal level.
>
> Yes, do I see my client in Foodtown. Yes do I see my client in Kings. Does that mean I can't represent him, Judge? . . .
>
> He sees things as a result of the relationship with his client. And, Judge, I see things, too. But that doesn't mean I'm a witness. I'm a tenant.

[1] Although the matrimonial matter had been assigned to Judge Conway, Judge Schaeffer had heard the May 23, 1997 motion on an emergent basis because Judge Conway was on vacation.

> If counsel is going to make a representation he's going to subpoena 269 tenants as material witnesses, well, then I'm a material witness. But unless that happens, how can I be singled out?
>
> [Exhibit P-3, at 25, 29]

At the hearing, Judge Conway removed both respondent and Rychel from the case, ordering both parties to obtain other counsel. Respondent filed an emergent motion for leave to appeal that order. On July 18, 1997 Appellate Division Judge Burrell Ives Humphreys reversed the order, ruling that "[t]he record is insufficient at this time to support the removal of appellant's attorney. . . . Appellant's counsel represented during the telephone conference that she will not be a necessary witness at trial. See R.P.C. 3.7(a)." According to Lourdes Rodriguez, the attorney who replaced Rychel, respondent denied to Judge Humphreys that she was romantically involved with [redacted] and represented that she would not be a necessary witness in the divorce matter.

Rodriguez testified at the ethics hearing that, at some point, the person known as "Babe" stopped using that name. She mentioned that someone identifying herself as "Maria" appeared at [redacted] school to pick him up. Rodriguez also referred to a motion in which respondent requested to be permitted to attend parent/teacher conferences with [redacted].[2] According to Rodriguez it was obvious to her that there was a personal relationship between respondent and [redacted]. Rodriguez asserted that, because respondent was romantically involved with [redacted] and spent time with [redacted] she would have been a necessary witness in

[2] On December 12, 1997 Judge Conway entered an order granting respondent's motion.

the matrimonial case. Respondent remained as counsel for [redacted] until she was suspended from the practice of law on March 24, 1998.

At the ethics hearing, respondent denied any romantic involvement with [redacted] denied that she was Babe and denied having babysat for [redacted]. According to respondent, [redacted] was never in her apartment unless accompanied by [redacted], who was there to perform repairs or maintenance, as the superintendent of the apartment complex. When asked to explain why [redacted] would testify to the contrary, respondent stated that [redacted] owed her money for deposition transcripts and that he had a motive to lie. She also noted that, according to [redacted], [redacted] often lied. Respondent further pointed out that, during [redacted] deposition in the divorce case, [redacted] stated that her five-year-old son did not always tell the truth.

Respondent also denied that she had attended [redacted] sporting events. She asserted that the apartment complex's athletic facilities are located behind her apartment and that she sometimes watched the neighborhood children play baseball. Respondent contended that she often ice skated at the Mennan Arena and that she had been there skating with others from her apartment complex on the day that, according to [redacted], she was watching [redacted] ice skating lesson.[3] Respondent maintained that, after she was no longer [redacted] attorney, she showed him the location of the Livingston YMCA, because [redacted] had an after-school activity

[3] Although respondent filed a police report charging [redacted] with stalking, no charges were filed against [redacted]

there and [redacted] did not know the area. In addition, she alleged that she took [redacted] to the Orchard School that [redacted] attended because [redacted] did not know its location.

With respect to the order permitting her to attend parent-teacher conferences, respondent testified as follows:

> I did not file a motion saying I want to go to the parent/teacher conference, but there was such animosity between the parties and problems with the school and I kept saying to Judge Conway that [redacted] was not getting the school records that he needed. Therefore, to alleviate any problems, he wanted me to go with him and quite frankly it was the first one that I had ever been to. I didn't know what to expect.
>
> [1T225][4]

Respondent denied appearing at the Rainbow Montessori School. She also denied having changed her appearance at the hearing before Judge Schaeffer, despite Rychel's testimony to the contrary. Respondent admitted having used vulgar language to Rychel when referring to [redacted], noting that she had been very upset about the accusation that she was romantically involved with her client and accusing Rychel of having used similar language about [redacted]

Respondent conceded that, if she were Babe, she would have been a material witness. She speculated that Rychel and Rodriguez wanted her removed from the divorce case because she was attempting to uncover evidence that [redacted] was earning unreported income from her employer. Respondent charged that the "Babe" allegation was a smokescreen designed to have her removed from the case to prevent her from presenting such evidence.

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[4] 1T refers to the March 21, 2001 hearing before the DEC.

The following exchange took place between respondent and the panel chair about respondent's failure to cross-examine [redacted]

Mr. Bergman: [I]t bothers me that he made those allegations and they went unchallenged by you, just so you know where we are coming from.

Ms. Fornaro: But I believe the last statement that [redacted] said was he is nothing but a liar.

Mr. Bergman: Well, when you have two parties that are in a hotly contested matrimonial proceeding and all that went on before it and all that goes on after it, it doesn't surprise me one little bit that Mrs. [redacted] says my husband has told lies.

* * *

Ms. Fornaro: Well, if, in fact, I had him sign a retainer agreement and I received a retainer check from him that I have copies of, okay, if he were a boyfriend, I would have done it pro bono. He paid me to do this.

Mr. Bergman: That is a point.

Ms. Fornaro: Everything was done in accordance with the rules of court and how you conduct yourself as an attorney. The fact that he thinks in his twisted mind that somehow I became his girlfriend, I am not responsible for that. That is not the kind of person that I would ever go out with.
[1T235-36]

When asked why she had not cross-examined [redacted], respondent answered as follows:

> Because quite frankly he turns my stomach. I can't even stand talking to him. And I know I'm in the roll [sic] of litigator and I should not let that interfere, but the revulsion is so strong that it is overwhelming. [2T100-01][5]

Despite this testimony, respondent acknowledged that, two weeks before the ethics hearing, she had accepted a ride from [redacted].

Respondent introduced evidence of three checks, all dated March 18, 1997, from [redacted] to herself — $500 for respondent's retainer, $160 for the divorce complaint filing fee and $13.11 for service of process. Although respondent claimed that she had submitted invoices to [redacted] and that he had made subsequent payments to her, and despite the panel chair's request for those documents, respondent did not produce them. Also, respondent was sued for $1100 by a court reporter for the cost of the transcript of [redacted] deposition testimony. After a judgment was entered against her, respondent paid the court reporter. Notwithstanding [redacted] failure to reimburse respondent for these costs, she did not take any action against him to recoup her losses.

As noted earlier, respondent filed a police report alleging that [redacted] was stalking her at the Mennan Arena. Although respondent was suspended at that time, the police report stated that she was [redacted] attorney and would represent him in the future. Respondent explained at the ethics hearing that, because she believed that her suspension would last only

[5] 2T refers to the March 22, 2001 hearing before the DEC.

three months, she gave the case to another attorney to "babysit." Respondent anticipated returning to the case after three months. She testified, however, that, when she learned that she was required to file forms and pay fees to be reinstated, she chose to pursue another career.

Respondent contended that, at the time that she was accused of having a romantic relationship with [redacted] she had a boyfriend who visited her on weekends. Respondent claimed that, because the individual is no longer her "companion" and resides in California, she could not call him to testify at the ethics hearing.

Linda York, [redacted] teacher from the Rainbow Montessori School, testified that she taught [redacted] from September 1996 through June 1997 and that he was one of fifteen children in her class. According to York, respondent never appeared at the school. York denied having asked [redacted] about Babe, maintaining that, as a teacher, she was legally prohibited from making such an inquiry. York recalled having met a woman that [redacted] introduced only as "Babe" and denied that respondent was Babe. York's denial was adamant, despite the fact that she had seen Babe four years earlier and then for only about forty-five minutes.

According to York, respondent asked her about her observations of [redacted] in the context of the custody dispute and asked if she would testify in court. York stated that she had two or three telephone conversations with respondent after March 1998, the month that respondent was suspended. Later in her testimony, however, York recalled that she had about six telephone conversations with respondent, including several during late 1999 and early

2000, when respondent identified herself as [redacted] attorney. On cross-examination, York equivocated about whether respondent had represented that she was [redacted] attorney, adding that she thought respondent was "helping" [redacted]. York asserted that, because respondent had told her that false statements had been attributed to York, she appeared at the hearing to clarify her remarks. She did not know that the hearing concerned ethics charges filed against respondent.

The manner in which respondent presented Linda York as a witness was a controversial issue at the ethics hearing. Respondent had named "L. Lucas" on her witness list. As it turned out, "L. Lucas" was Linda York. York's birth name is Lucas and, since getting married in 1979, she has been known as either Linda York or Linda Lucas York. At the conclusion of testimony on the prior day, the panel chair had asked respondent about the witnesses that she intended to call at the continuation of the hearing the next day. The following exchange took place among the panel chair (Willard Bergman), respondent and the presenter (Timothy Barnes):

Mr. Bergman:	I want to know the subject matter of Ms. Lucas' testimony in a broad sense.
Ms. Fornaro:	That I am not the babysitter, I am not Babe.
Mr. Bergman:	Who is she?
Ms. Fornaro:	She is a witness. She knows the parties.
Mr. Barnes:	Who is she?

Mr. Bergman: I want to know --

Ms. Fornaro: She is their friend. I don't know this woman. I am not friends with her. Gloria Morales is a witness. She knows that I am not romantically involved with [redacted] did not babysit this child and I'm not Babe.

Mr. Bergman: But who -- where does she live? How is it that she knows these things?

Ms. Fornaro: She lives two doors down from me.

Mr. Bergman: She is a neighbor of yours?

Ms. Fornaro: Right.

Mr. Bergman: Is Ms. Lucas a neighbor of yours?

Ms. Fornaro: No, she's not.

Mr. Bergman: Where does she live?

Ms. Fornaro: She knows [redacted] and [redacted]

Mr. Bergman: Okay. So Ms. Lucas knows the parties?

Ms. Fornaro: Yes.

[1T243-45]

Following York's testimony, the panel chair chastised respondent for concealing York's identity, characterizing respondent's actions as disingenuous. Moreover, the panel chair questioned whether a petition that respondent had filed for removal of the ethics matter to federal court, was designed to delay the ethics hearing because respondent knew that York would not be available to testify. The panel chair noted that the ethics hearing originally

scheduled for January 10, 2001 had to be adjourned because, on that date, respondent had filed a petition to transfer the ethics matter to federal court. On January 22, 2001 United States District Court Judge John W. Bissell dismissed the petition for lack of subject matter jurisdiction. During York's testimony, she mentioned that she had told respondent that she would not be available on January 10, 2001. According to York, respondent told her that the hearing would be rescheduled. The panel chair and the presenter, thus, surmised that respondent had filed the petition solely to delay the hearing; in this fashion, respondent was able to reschedule the hearing without being required to reveal York's identity as an unavailable witness.

Gloria Morales, respondent's former neighbor, testified that she has been a friend of respondent for almost five years and that she knew the people whom respondent dated. According to Morales, respondent never told her that she had a romantic relationship with [redacted] She stated that respondent was not a babysitter and was never responsible for [redacted]. Morales denied knowing anyone named Babe. Despite Morales' alleged knowledge about respondent's personal life, on cross-examination she revealed that she was not aware that respondent represented [redacted] in his divorce, that respondent had accompanied [redacted] at [redacted] activities or that respondent had a "weekend companion." Although Morales denied knowing anyone named "Babe," she testified that respondent's current fiancé calls respondent "Babe." She further denied that respondent had ever changed her appearance, during the time that she has known her.

Karen Kuhlmann, a friend and former client of respondent, testified that, although respondent often talked to her about the various men with whom she has been involved, respondent never told her that she was romantically linked to [redacted] Kuhlmann denied that respondent was known as "Babe" or that she had changed her looks at any time.

One additional point warrants mention. On November 1, 2000, during the prehearing phase of this matter, at respondent's request the panel chair asked Judge Reginald Stanton for a copy of a custody investigation report prepared for the divorce proceeding. This report had been provided to the court, but not to the parties. In turn, on November 8, 2000 respondent wrote to Judge Stanton, using stationery that identified her as "Maria P. Fornaro, Esq." At that time, respondent was suspended from the practice of law. In the letter to Judge Stanton, respondent accused [redacted] of "fraudulently understating" her income in a bankruptcy petition and in the case information statements filed in the matrimonial action. Respondent asked Judge Stanton for a hearing on that matter and on "the instances of continuing child abuse." Judge Stanton denied respondent's request for the report, concluding that it was not relevant to respondent's conduct and that releasing the report would intrude on the privacy of the parties. He also denied respondent's request for a hearing.

* * *

The DEC concluded that, notwithstanding respondent's denials, the record established that she had been romantically involved with [redacted] while he was a client, thereby creating a conflict-of- interest situation. The DEC found [redacted] to be a credible witness, with no reason to testify falsely. The DEC gave great weight to respondent's failure to cross-examine [redacted] rejecting her explanation that she could not do so because she detested being in his presence. The DEC noted that respondent's position in this regard was inconsistent with her acceptance of a ride from [redacted] only two weeks earlier. The DEC further relied on (1) [redacted] testimony that [redacted] had admitted the relationship to her (the DEC characterized [redacted] as a credible witness) and (2) respondent's failure to produce evidence of any invoices to or payments from [redacted], beyond the retainer and costs. The DEC found respondent not truthful, noting that, during the hearing, she was evasive about crucial issues.

The DEC rejected York's testimony, finding that "by her demeanor and lack of firm conviction on several issues, Ms. York, although well intentioned, was a very 'controllable' witness." The DEC did not give great weight to York's testimony that respondent was not Babe, noting that York had met with Babe for less than one hour, more than four years before the ethics hearing.

The DEC found that, by having an intimate relationship with her client, respondent engaged in a conflict of interest, in violation of *RPC* 1.7(b). The DEC reasoned that, because child custody was at issue in the divorce proceeding and because [redacted] had accused [redacted] of having inappropriate relationships with other men, respondent jeopardized her client's

standing as a custodial parent by engaging in an intimate relationship with him. The DEC further determined that, when respondent continued to represent [redacted] despite the likelihood that she would be a witness in the matrimonial proceeding, and when she concealed the facts from the court and from opposing counsel, she violated *RPC* 3.7(a) and *RPC* 8.4(c). The DEC also concluded that respondent intentionally misled Judge Schaeffer when, replying to his questions about Babe, she deflected the inquiry to Audrey Esposito and also that she lied to Judge Schaeffer when she denied having an address for Babe. The DEC concluded that respondent's conduct in this regard violated *RPC* 3.3(a)(5) and *RPC* 8.4(c).

With respect to the circumstances surrounding York's identity as a witness, the DEC stated as follows:

> It is the panel's opinion that the Respondent intentionally concealed the true identity of this witness from the Presenter and the Panel during the Pre-Hearing discovery and the first full day of testimony in this proceeding. She intentionally provided the name of 'L. Lucas' to conceal the fact that she intended to produce Linda York as a witness. The panel is deeply troubled by the Respondent's conduct, but believes that it is consistent with the conduct she exhibited on these issues during the underlying matrimonial action and in her testimony and presentation before this Panel. Her actions in this regard confirm the Panel's conclusion that the Respondent is unworthy of belief and has engaged in subterfuge and misleading conduct.
>
> [Hearing panel report at 11-12]

Taking into consideration respondent's extensive disciplinary history and her blatant refusal to abide by the *Rules of Professional Conduct*, the DEC concluded that she is unfit to practice law and recommended her disbarment.

* * *

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. The record fully supports a finding that respondent engaged in a sexual relationship with a divorce client and repeatedly and continually lied about it to the court, opposing counsel and the DEC hearing panel. Moreover, respondent's machinations to delay the ethics hearing – by filing a petition for its removal to federal court – and to conceal the identity of a witness, Linda York, are further examples of her improper and deceitful behavior.

Despite respondent's vehement denials, we found clear and convincing evidence that respondent engaged in an intimate personal relationship with a divorce client. [redacted] testified that he and respondent were romantically involved, both during and after respondent's representation. He also confirmed that respondent used the name "Babe" and that she occasionally babysat for [redacted] at her apartment when he was busy and [redacted] regular babysitter was not available. Respondent declined to cross-examine [redacted] indicating that she would call him as a witness as part of her defense. She did not do so. Respondent's failure to cross-examine [redacted] allows the inference that his statements about their relationship were true. In light of respondent's admission that, two weeks before the hearing she accepted a ride from [redacted], we rejected her explanation that she did not call him as a witness because she found it revolting to be in his presence.

At oral argument before us, respondent claimed that, at the ethics hearing, she had been precluded from calling [redacted] as a witness. Nothing in the transcripts of the hearing supports respondent's contention. After [redacted] left the hearing room, upon respondent's announcement that she would not cross-examine him, the panel chair asked respondent if she intended to call [redacted] as a witness. Although respondent initially answered that she would, she later stated that she did not know if she would need his testimony. Moreover, after the panel chair cautioned respondent about the inferences that could arise upon her failure to challenge [redacted] testimony, respondent never announced an intention to call [redacted] as a witness. In addition, at the end of the testimony on March 21, 2001, when the hearing panel asked respondent the names of the witnesses that she would be calling, she did not mention [redacted] name.

[redacted], too, testified that [redacted] and respondent had engaged in a romantic relationship. She noted [redacted] comments to her that "Babe" lived at the apartment that turned out to be respondent's and testified about respondent's personal and vulgar attacks against her. [redacted] stated that, although [redacted] initially denied any personal involvement with respondent, he finally admitted the relationship, once respondent was no longer his attorney. Moreover, both Rychel and Rodriguez, [redacted] attorneys, testified that respondent was "Babe" and that they believed that she had had an affair with [redacted].

In order to credit respondent's denial of her relationship with [redacted] we would be required to reject the testimony of four witnesses, whom the DEC found credible. In

addition, the DEC specifically found that respondent was not a credible witness. We deferred to the DEC's assessment of credibility, as the hearing panel was able to personally observe the demeanor of the witnesses.

Respondent's attempts to discredit others were indecorous and ineffective. She argued that [redacted] had testified that [redacted] certifications filed in the divorce case were untruthful. As noted by the DEC, it is not unusual – albeit unfortunate – for divorce litigants to accuse each other of dishonesty. Respondent's attempt to cast doubt on [redacted] identification of her apartment, by arguing that [redacted] had admitted that her five-year-old son does not always tell the truth and by stating that [redacted] was "brain-damaged," was appalling.

Other indications of respondent's relationship with [redacted] include her failure to produce copies of invoices or payments beyond the initial $500 retainer, her representation to Rychel that "Babe" was a twenty-year old tutor and her involvement in the lives of [redacted] and [redacted]. As to the latter circumstance, the record shows that respondent accompanied [redacted] to [redacted] sports activities, attended a meeting with a teacher at [redacted] school and even obtained a court order permitting her to attend future parent-teacher conferences. Respondent's immersion into [redacted] life went well beyond a professional attorney – client relationship.

An attorney's intimate relationship with a client is not necessarily unethical. Under the circumstances of this particular case, however, it ran afoul of the rules. Custody of [redacted] five-year-old son was a major issue in the divorce case. [redacted] had alleged that

[redacted] was an unfit parent because of her relationships with other men. The parties' private lives, thus, were under scrutiny. Yet, respondent called into question [redacted] fitness by participating in an intimate relationship with him, thereby jeopardizing his position as the custodial parent. Respondent, thus, placed her personal relationship ahead of the interests of her client, in violation of *RPC* 1.7(b).

In addition to engaging in a conflict-of-interest situation, respondent failed to withdraw from [redacted] representation, despite her knowledge that she was likely to be a necessary witness in the divorce matter. Rychel testified, without rebuttal, that he had warned respondent, on several occasions, that she should withdraw because he planned to take her deposition and call her as a witness. During the May 30, 1997 hearing before Judge Conway on the reciprocal motions to remove counsel, Rychel stated that he believed respondent was romantically involved with [redacted] and that he wanted to take her deposition and call her as a witness in the divorce action. Respondent, therefore, was on notice that she would be called as a witness. She was not called, however, because she succeeded in concealing her identity as "Babe" and in removing Rychel from the case. Respondent was suspended before Rychel's successor, Rodriguez, could call her as a witness. Respondent's failure to withdraw from [redacted] representation, when she knew that she would be called as a witness, violated *RPC* 3.7(a).

Respondent's most serious ethics violations involved lying to several judges. At the May 23, 1997 hearing on Rychel's motion to compel respondent to produce the name and

address of "Babe," respondent gave Judge Schaeffer misleading answers to deflect attention from her to [redacted] full-time babysitter, Audrey Esposito. When Judge Schaeffer asked respondent if there was someone named "Babe," she was evasive and replied that there was a babysitter named "Nanny." Again, when Judge Schaeffer asked for Babe's name, respondent answered that "Nanny is Audrey Esposito." Respondent knew the focus of the inquiry was "Babe's" identity. Yet, she shifted attention to Esposito to avoid further questions about herself. We found, thus, that respondent deliberately misled Judge Schaeffer about her identity as Babe. Moreover, when Judge Schaeffer asked her why she did not provide her adversary with Babe's name and address, respondent replied that she did not have that information. Respondent's misrepresentations and deceitful answers to Judge Schaeffer violated *RPC* 3.3(a)(5) and *RPC* 8.4(c).

Respondent was deceitful toward Judge Conway and Judge Humphreys, too. At the hearing before Judge Conway, after Rychel accused her of having a personal relationship with [redacted] respondent stated that she was simply a tenant at the apartment complex where [redacted] was the superintendent. She suggested that, if she were a witness, the other 269 tenants should also be witnesses. When respondent appealed that portion of Judge Conway's order removing her as counsel, she represented to Judge Humphreys that she would not be a necessary witness at trial, despite her knowledge that Rychel intended to take her deposition. Although respondent was not charged with lying to these judges, we considered her deceit toward them as an aggravating factor.

Moreover, respondent violated *R.*1:20-20. She testified that, anticipating that her 1998 suspension would last only three months, she gave the case to another attorney, planning to resume the representation after her reinstatement. *R.*1:20-20(b)(10) prohibits attorneys from recommending another attorney to complete a matter. Although respondent was not specifically charged with a violation of *R.*1:20-20, the record developed below contains clear and convincing evidence of a violation of that rule. Respondent did not object to the admission of such evidence in the record. Indeed, her testimony brought the matter to light. In view of the foregoing, we deemed the complaint amended to conform to the proofs. *R.* 4:9-2; *In re Logan*, 70 N.J. 222, 232 (1976).

In addition, when respondent wrote to Judge Stanton about the panel chair's request for a copy of the custody investigation report, she used letterhead with the title "Esquire." Indeed, on the cover letter accompanying the brief that respondent submitted to us, she again used the title "Esquire." *R.* 1:20-20(b)(5) prohibits suspended attorneys from using stationery identifying them as lawyers.

Altogether, respondent's ethics offenses were deplorable. She engaged in an improper relationship with her client and then lied to conceal that relationship. She lied to her adversaries, to judges and, ultimately, to the hearing panel. In addition, her behavior at the ethics hearing was abominable. She continually interrupted the presenter and other witnesses, accused her adversary of withholding discovery (despite four prehearing conferences in which discovery was either exchanged or discussed) and repeatedly referred to

matters that were irrelevant to the ethics proceeding, such as her accusations that [redacted] had committed adultery and had filed fraudulent case information statements and a fraudulent bankruptcy petition. Respondent's improper behavior and pattern of misrepresentation continued during her presentation to us. In her brief, although she did not file a motion to supplement the record, she repeatedly referred to matters outside of the record. At oral argument, she continued to refer to matters outside the record, even after she was instructed not to do so, in an effort to mislead us about the facts of the case.

During the ethics hearing, respondent provided a glimpse of her inappropriate trial tactics. Aware that [redacted] teacher was known as Linda York, respondent intentionally named her as "L. Lucas" on her witness list, in order to conceal her identity. The presenter and the hearing panel did not learn York's identity until she began to testify. The day before York testified, the panel asked respondent for a general idea about the essence of Lucas's testimony. Incredibly, respondent gave false answers. Instead of revealing that Lucas was Linda York, [redacted] teacher, respondent misrepresented that Lucas was a friend of the parties. Moreover, during York's testimony, it became apparent that she had not been available on January 10, 2001, the original date set for the ethics hearing. On that date, respondent presented the panel with a petition for removal of the ethics matter to federal court. It should have been obvious to respondent that federal courts do not have jurisdiction over state ethics matters. Indeed, Judge Bissell dismissed the petition on that basis. Not surprisingly, the hearing panel theorized that, once respondent became aware of York's

unavailability, she filed the frivolous petition for removal, in order to adjourn the ethics hearing without revealing York's identity

In summary, respondent engaged in a conflict-of-interest situation, failed to withdraw from representation, despite the likelihood that she would be a witness, made serious misrepresentations to courts, adversaries and the DEC and failed to comply with *R.*1:20-20. Her prior ethics infractions, resulting in a three-month suspension, a reprimand and a two-year suspension, must be considered in aggravation. There are no mitigating factors.

In cases of knowing misappropriation of trust funds, disbarment is mandatory in New Jersey. *In re Wilson*, 81 *N.J.* 451(1979). In all other cases where disbarment is discretionary, this ultimate sanction is imposed when the record establishes that the attorney's character is unsalvageable, that is, when no amount of redemption, counseling or education will overcome the attorney's outrageous conduct. For example, an attorney convicted of a serious crime may be deemed incorrigible and, accordingly, deserving of disbarment. The common thread that runs through cases resulting in disbarment is that the conduct is so offensive and obnoxious both to common decency and to principles of justice that there can be no other result:

> Disbarment is reserved for the case in which the misconduct of an attorney is so immoral, venal, corrupt or criminal as to destroy totally any vestige of confidence that the individual could ever again practice in conformity with the standards of the profession. Disbarment is a guarantee to the public that the attorney will not return to the profession.
>
> [*In re Templeton*, 99 *N.J.* 365 (1985)]

The Court has applied the principles noted in *Templeton* in a number of cases in which attorneys have shown a continuing disregard for clients, the judicial system and the disciplinary process. In *In re Spagnoli*, 115 *N.J.* 504 (1989), the attorney accepted retainers from fourteen clients over a three-year period without any intention of performing services for them. He lied to the clients, assuring them that their cases were proceeding apace. After neglecting their cases to the point that judgments had been entered against his clients, the attorney ignored their efforts to contact him by telephone. To explain his prior failure to appear in court, he lied to a judge. Afterward, the attorney failed to cooperate in the disciplinary process. The Court adopted our findings and recommendation that the attorney be disbarred:

> Respondent's repetitive, unscrupulous acts reveal not only a callous disregard for his responsibilities toward his clients and disdain for the entire legal system, but a deficiency in his character . . . The Board concludes that the record shows that respondent's conduct is incapable of mitigation. A lesser sanction than disbarment will not adequately protect the public from this attorney, who has amply demonstrated that his 'professional good character and fitness have been permanently and irretrievably lost.' *Matter of Templeton, supra,* 99 *N.J.* 365, at 376 (1985).
>
> [*Id.* at 517-18]

In *In re Moore*, 143 *N.J.* 415 (1996), the attorney accepted retainers in two matters and failed to take any action in behalf of his clients. Although he agreed to refund one of the retainers and was ordered to do so after a fee arbitration proceeding, he retained the funds and then disappeared. The attorney did not cooperate with the disciplinary investigation. In recommending disbarment, we remarked as follows:

> It is unquestionable that this respondent holds no appreciation for his responsibilities as an attorney. He has repeatedly sported a callous indifference to his clients' welfare, the judicial system and the disciplinary process. . . . The Board can draw no other conclusion but that this respondent is not capable of conforming his conduct to the high standards expected of the legal profession. Simply put, he is beyond redemption.
>
> [*In the Matter of John A. Moore*, DRB 95-163 (December 4, 1995)]

Similarly, in *In re Cohen*, 120 *N.J.* 304 (1990), the attorney, after accepting representation in a matter, failed to file the complaint until after the statute of limitations had expired. He compounded his misconduct by altering the filing date on the complaint to mislead the court and opposing counsel that he had timely filed the complaint. The attorney misrepresented the status of the matter to the client, giving assurances that the case was proceeding. The Court disbarred the attorney, observing that "[w]e are unable to conclude that respondent will improve his conduct." *Id.* at 308.

See also In re Vincenti, 152 *N.J.* 253 (1998) (attorney disbarred for his repeated abuses of the judicial process resulting in harm to his clients, adversaries, court personnel and the entire judicial system).

Other attorneys whose misconduct was not as egregious as that of the above attorneys have received lengthy suspensions. An attorney who made repeated misrepresentations to several parties received a three-year suspension. In *In re Kornreich*, 149 *N.J.* 346 (1997) the attorney had been involved in an automobile accident, left the scene, denied her involvement to the investigating police officer and implicated an innocent party, her full-time babysitter. Kornreich then obtained a fraudulent affidavit from a private investigator, who claimed that

he had been at a meeting with her at the time of the accident. She gave the affidavit to her attorney. Based on Kornreich's representations to him and the fraudulent affidavit, her attorney successfully moved for the dismissal of the case. As a result of Kornreich's misrepresentations, summonses were issued against the babysitter. Kornreich then unsuccessfully tried to persuade the babysitter, who had relocated to Oregon, not to appear at the municipal court trial. At that trial, however, the other party to the accident identified Kornreich as the driver of the automobile. The motor vehicle complaint that had been issued against the babysitter was dismissed and criminal charges were filed against Kornreich. They were dismissed after she completed a pre-trial intervention program. During the ethics investigation, Kornreich continued to deny her involvement in the automobile accident

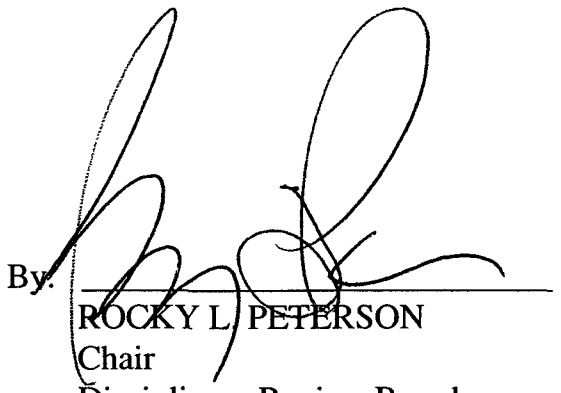
The Court imposed a three-year suspension, finding that Kornreich had made false statements of material fact to a tribunal; offered false evidence; failed to disclose to a tribunal a material fact with knowledge that the tribunal might be misled; falsified evidence or counseled or assisted a witness to testify falsely; committed a criminal act that reflects adversely on the attorney's honesty, trustworthiness or fitness as a lawyer; engaged in conduct involving dishonesty, fraud, deceit or misrepresentation; and engaged in conduct prejudicial to the administration of justice. The Court found that Kornreich's youth, inexperience and reliance on her attorney-husband's advice were mitigating factors. Two dissenting members of the Court would have disbarred Kornreich.

Here, the egregiousness of respondent's behavior was similar to that of the attorneys in the *Templeton/Spagnoli/Moore/Cohen* line of cases. Although respondent's lies were not as pervasive as those of Kornreich, unlike Kornreich she has an extensive ethics history.

Lastly, this respondent has not shown any remorse or contrition for her wrongdoing. She has demonstrated that she is unable – indeed, unwilling – to conform to the rules and standards applicable to attorneys. As shown above, we have not hesitated to disbar attorneys who have been shown to be ethically bankrupt. Our review of the record convinced us that respondent falls into that category.

For the protection of the public as well as for the preservation of the integrity of the bar and the judicial system, we unanimously voted to recommend respondent's disbarment. Three members did not participate.

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



By: _____
ROCKY L. PETERSON
Chair
Disciplinary Review Board

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Maria P. Fornaro
Docket No. DRB 01-260

Argued: October 18, 2001

Decided: March 5, 2002

Disposition: Disbar

Members	*Disbar*	*Suspension*	*Reprimand*	*Admonition*	*Dismiss*	*Disqualified*	*Did not participate*
Peterson	X						
Maudsley	X						
Boylan							X
Brody	X						
Lolla	X						
O'Shaughnessy	X						
Pashman							X
Schwartz							X
Wissinger	X						
Total:	6						3

Robyn M. Hill 3/18/02
Robyn M. Hill
Chief Counsel