NO. BD-2006-039

IN RE: BARBARA C. JOHNSON

S.J.C. Order of Disbarment entered by Justice Spina on August 9, 2006, with an effective date of September 8, 2006.[1]

MEMORANDUM AND JUDGMENT

The Board of Bar Overseers (board) filed an information recommending the disbarment of Attorney Barbara C. Johnson (respondent) from the practice of law. The board adopted the special hearing officer's findings of fact and conclusions of law, with two minor exceptions. I adopt those findings and conclusions. The findings, supported by substantial evidence, see Matter of Segal, 430 Mass. 359, 364 (1999); S.J.C. Rule 4:01, § 8 (4), as appearing in 425 Mass. 1311 (1997), and the conclusions of law, are summarized as follows.

Count I. William Jones,[1] born in 1985, was the subject of a care and protection proceeding in the Juvenile Court in which it was alleged that his father, John Jones, had physically, sexually, and emotionally abused him. John Jones filed a paternity action in the Probate Court Department alleging that he was William's father. The two matters were assigned specially to a judge in the Juvenile Court. In 1989, John Jones's custody and visitation rights as to William were terminated. The respondent was not involved in those proceedings.

William's mother, Jane Doe, married Robert Brown in 1989, and William thereafter was known as William Brown. The Browns had a son, David, who was born in 1990. The Browns subsequently divorced, and William and David lived with their mother.

In May, 2000, eleven years after his visitation and custody rights were terminated, John Jones, represented by the respondent, filed a complaint for modification of the judgment in the paternity action. The respondent also filed a separate action on behalf of John Jones against a doctor who had concluded that Jones had sexually abused his son, the hospital where the doctor practiced, the court-appointed investigator, the Department of Social Services, and others involved in the original care and protection matter. The respondent had obtained copies of psychological and other reports, as well as deposition transcripts filed in the care and protection matter. The respondent had not sought or obtained the permission of the Juvenile Court judge before taking possession of these materials, which contained confidential, privileged, or personal information about Jane, William, and David Brown, including references to findings that William had been sexually abused by his father. At the time, the respondent knew that these records were confidential and that she could not obtain or release them without the judge's authorization.

In early 2001, the respondent posted on her website various items about Jane, William, and David Brown, including pleadings from the two actions she filed on behalf of John Jones, pleadings from Jane's divorce action, and part of a report by a psychologist who treated Jane and William. These papers contained material that had been quoted from, and summarized from, Juvenile Court records that were impounded, including Jane, William, and David's names and addresses, and the additional identification of William as William Jones. The respondent identified both boys as illegitimate, and as victims of sexual abuse by their respective fathers. She referred to Jane Brown as a perjurer. In mid February, 2001, the respondent posted a photograph of William on her website. She also posted information about Jane Brown's candidacy for elected municipal office in a municipality that she named, describing her as an

"out-of-wedlock mom."

On May 1, 2001, the Juvenile Court judge issued an order, served on the respondent and her client, stating that all the Juvenile Court records involving William were impounded, that they had been "wrongfully disseminated," and directing the respondent and John Jones to return all copies thereof to the court and ordering the respondent to remove all references thereto from her website, including William's true name and identifying information. The respondent ignored the order.

In April, 2001, Jane Brown filed a complaint with bar counsel. The respondent filed a response to the complaint, and in December, 2002, she posted a copy of her response, with only William's name redacted, on her website.

In January, 2003, bar counsel sought limited release of impounded records in the paternity action from the Probate Court Department. The respondent appeared and argued that the records were public records, by virtue of a 1998 amendment to G. L. c. 209C, § 13, which provides that records in certain paternity actions under G. L. c. 209C are public unless a judge orders otherwise. The judge rejected the argument, noting that the paternity action was assigned specially to be heard by a Juvenile Court judge in conjunction with the care and protection petition, and that because the records in question had been submitted in both matters, they were inextricably intertwined with the care and protection action. The judge concluded that treating the records as public for purposes of the paternity action would defeat the public interest in keeping care and protection proceedings closed to the public and their records impounded. See G. L. c. 119, § 38; Juvenile Court Standing Order 1-84. The judge deemed the papers previously filed in the paternity action to be impounded by operation of G. L. c. 209C, § 13, as it existed before the 1998 amendment, and he ordered all papers filed after the 1998 amendment to be impounded. The respondent did not appeal the order. The judge allowed bar counsel's motion for limited release of the paternity action records for purposes of bar discipline proceedings against the respondent. As of August, 2003, the respondent had not complied with the Juvenile Court order of May, 2001.

By disseminating impounded material from the care and protection and paternity actions, by failing to return to the Juvenile Court impounded reports belonging to the court, as ordered by the judge, and by failing to remove impounded material from her website, again as ordered by the judge, the respondent violated Mass. R. Prof. C. 8.4 (d) and (h). hi addition, by deliberately disobeying the Juvenile Court judge's May 1, 2001, order and by engaging in knowing violations of Juvenile Court Standing Order 1-84 and G. L. c. 209C, § 13, the respondent violated Mass. R. Prof. C. 3.4 (c) and 8.4 (d) and (h). Finally, by disseminating information about William, David, and Jane on her website with no substantial purpose other than to embarrass or burden them, the respondent violated Mass. R. Prof. C. 4.4 and 8.4 (h).

Count II. In October, 1999, Mary Parker consulted the respondent concerning criminal charges her husband was facing that arose out of allegations that Mr. Parker had sexually abused their adult daughter, who was mentally retarded and living in a residential facility supervised by the Department of Mental Retardation (department). The department brought a protective services action against the Parkers. At the time, the Parkers suspected someone at the facility had done what Mr. Parker was accused of doing. They were represented by other counsel. Mrs. Parker consulted with the respondent several times in early October, 1999. On November 1, 1999, the respondent advised Mrs. Parker that she should give her all relevant documents to enable her to determine whether she could be of assistance. Several days later, Mrs. Parker sent the respondent a check and a box of documents. On November 11 the respondent recommended to Mrs. Parker that, after reviewing the documents, she be retained to take depositions in the protective services action. The respondent indicated the balance due for her services rendered thus far, and told Mrs. Parker that she required a retainer of $10,000, which she said she would place in an escrow account from which she would pay herself for future services as they were rendered.

The respondent received the Parkers' retainer on November 22,1999, but she did not deposit it in a client funds account. Instead, she deposited it to her personal account. In early December, 1999, Mrs. Parker discharged the respondent. She asked the respondent to provide an itemized bill and return the balance of the retainer after deducting any amounts due for services rendered. One week later the respondent sent an itemized bill and her check in the amount of $3,174.50. The Parkers demanded the return of an additional $6,400. The respondent refused, and also failed to deposit the disputed amount in a trust account. In March, 2000, the Parkers filed a complaint with the office of bar counsel.

In mid December, 2002, the respondent posted on her website the Parker bill, correspondence between her and Mrs. Parker, and copies of her response to bar counsel regarding the Parkers' complaint. The posted materials disclosed confidential, personal, and private information that the respondent received in the course of her professional relationship with the Parkers, including the true identities of the Parkers and their family members, their daughter's history and disabilities, the history and details of the sexual abuse allegations,[2] and communications among the respondent, the Parkers, and the Parkers' other counsel. The respondent never obtained the Parkers' permission to disclose or disseminate the information about them on her website, or the permission of anyone authorized to consent on behalf of the Parkers' daughter before posting information about her.

On December 23,2002, the Parkers' attorney made written demand of the respondent that she immediately remove the confidential and privileged information about them from her website. The respondent answered by suggesting that she would consider removing the postings if the Parkers first withdrew their complaint to bar counsel. As of August, 2003, the respondent had not removed any information about the Parkers from her website.

The special hearing officer found that bar counsel had failed to prove that the respondent had charged a clearly excessive fee. He also concluded that bar counsel failed to prove that the respondent intentionally had made false, deceptive, or misleading representations to the Parkers about her fees, time, and charges. Bar counsel has not appealed those findings.

By commingling the Parkers' retainer payment with her own funds, failing to segregate the disputed portion of their retainer, and failing to account adequately to the Parkers for her application and disposition of the retainer, the respondent violated Mass. R. Prof. C. 1.15 (a)-(c), 1.16 (d), and 8.4 (c) and (h). In addition, by revealing confidential information gained in the course of her professional relationship with the Parkers without their consent, the respondent violated Mass. R. Prof. C. 1.6(a) and 1.9 (1) and (2). Finally, by demanding the withdrawal of the Parkers' bar discipline grievance as a condition of removing their confidential information from her website, the respondent violated Mass. R. Prof. C. 8.4 (d) and (h) and S.J.C. Rule 4:01, § 10.

Count III. In 1992 the respondent filed a wrongful termination action on behalf of a client. The complaint was filed in the Superior Court and later remanded to the District Court. In January, 1995, a judge in the District Court Department entered an order permitting the respondent to inspect the defendants' documents. The respondent failed to appear for the scheduled inspection. In February she filed a motion to reconsider the scheduling order, and a motion seeking leave to depose nonparty witnesses outside the presence of defense counsel. The motions were denied, and the judge found that the motions were brought without legal or factual basis and hi bad faith. The judge ordered the respondent and her client to pay attorney and paralegal fees totaling $981.25. They did not make the payments and both subsequently were found in contempt. The judge ordered payment of further fees of $558, plus a civil penalty of $50 for every day that the fees were not paid, together with a warning that, as a further sanction, the plaintiffs complaint was subject to dismissal. No payments were made. On April 5,1995, the judge ordered payment of a civil penalty of $650. Again, no payments were made. On April 19, 1995, the complaint was dismissed, and the respondent's client was ordered to pay the defendants $3,809.25 in costs.

The respondent did not appeal the amended final judgment of dismissal. Instead, she filed a request for retransfer to the Superior Court, purportedly under G. L. c. 231, § 102C. The Superior Court judge ordered the request for retransfer to be stricken. The respondent appealed that order. The Appeals Court affirmed, held that the appeal was frivolous, and awarded attorney's fees and costs to be determined at a later date. The Appeals Court subsequently awarded $30,000 in fees and $1,071.65 in costs. The amounts ordered were paid by July, 2000.

On December 13,1995, the judge modified the prior contempt rulings by holding the respondent's client in contempt only for nonpayment of the paralegal fees ($261.25),[3] and holding the respondent in contempt only for nonpayment of the attorney's fees ($ 1,278) plus the civil penalty ($650). The order further provided that the respondent could purge her contempt and be forgiven payments of the civil penalty if she paid $1,278 by December 20, 1995. The respondent made no payments. As a result a final judgment of contempt was entered against her in July, 1996.

The respondent appealed the final judgment of contempt entered against her. The Appeals Court affirmed the judgment. After the judgment of contempt was affirmed, the District Court judge notified the respondent that she could become liable for additional penalties and the matter of her contempt would be referred to the Board of Bar Overseers if she did not purge her contempt by July 30, 1998. The respondent made no payment.

The District Court judge held a hearing on December 17, 1998, on the issue of the respondent's continuing contempt. After determining that the respondent had wilfully, and without justification or cause, failed to purge herself of contempt, the judge ordered that the respondent immediately be taken into custody. The next day the respondent arranged for payment of all sums owed for her contempt, and she was thereupon released. She filed no further appeal.

By knowingly disobeying the District Court judge's orders of December 13, 1995, after those orders were affirmed on appeal, engaging in contempt of court, and refusing to purge her contempt until incarcerated, the respondent violated Mass. R. Prof. C. 3.4 (c) and 8.4 (d) and (h). By filing motions without any legal or factual basis and in bad faith, exposing her client to dismissal of her claims and personal liability for sanctions and damages through the respondent's misconduct, failing to appeal from the contempt judgment against her client, and pursuing a frivolous appeal from the Superior Court judge's order striking the retransfer request, the respondent violated Canon One, DR1-102(A)(5) and (6), Canon Six, DR 6-101 (A)(l) and (2), and Canon Seven, DR 7-101(A)(3).

In aggravation, the respondent has a history of prior discipline, an admonition in 1995 for repeated insults to the opposing party, and interruptions and other interference in the course of witness examinations in a civil matter. AD-95-80, 11 Mass. Att'y Disc. R. 468 (1995). Because this prior discipline was for related misconduct, that is, refusing to conform her behavior to professional norms and showing contempt for the legal process, it merits consideration in determining the sanction. See Matter of Gross, 435 Mass. 444, 453, 17 Mass. Att'y Disc. R. 271, 280-281 (2001).

The respondent's conduct during the disciplinary proceeding, in which she was insulting, vituperative, demonstrated utter disrespect and contempt for the process, and refused to participate in the hearing, is also an aggravating factor that merits consideration in determining the sanction.[4]

Discussion.

(a) Count I. The respondent contends that she deliberately could not have disobeyed the Juvenile Court judge's order of May, 2001, because she was never in the Juvenile Court. She ignores the simple fact that the judge ordered her to return certain materials and to remove

certain postings on her website. A copy of the order was served on her, and she ignored it. She never sought to vacate or appeal the order. Nor did she appeal the complementary ruling and order of the Probate Court judge stating that the records filed in the paternity action before 1998 were impounded by operation of law, and papers filed after G. L. c. 209C, § 13, was amended in 1998 were impounded by order of the court. The issue is waived and cannot be litigated for the first time in her disciplinary proceedings. An attorney must obey a court order where she has exhausted all appeals. See Florida Bar v. Gerstein, 707 So. 2d 711 (Fla. 1998). The respondent's claim that the 1998 amendment to G. L. c. 209C, § 13, has retroactive effect similarly is waived.

The respondent argues that there was no evidence that a source of the material she posted on her website included impounded Juvenile Court records. The posted material contained quotations from, and summaries of, reports filed in the Juvenile Court. Moreover, the May, 1, 2001, Juvenile Court order states that the respondent wrongfully disseminated impounded material. She never sought a hearing to explain that her sources were not copies of impounded Juvenile Court records; she simply ignored the order. The point is waived.

The respondent, citing the absence of any testimony, argues the absence of any evidence to support the findings that the information posted on her website had no substantial purpose other than to embarrass Jane, William and David Brown. No live testimony was required to draw this inference from the highly personal nature of the information (one reason why care and protection records are impounded and the public is excluded from such proceedings), and from the fact that the respondent had filed an action seeking modification of the judgment in the paternity action.

(b) Count II. The respondent claims that because it was determined that she did not charge an excessive fee, she owed nothing to the Parkers and therefore was not required to set aside any money she legitimately earned by placing it in a trust account. There are two flaws in her argument. The first is that her conduct is in violation of the plain language of Mass. R. Prof. C. 1.15 (b)(2)(ii), which requires an attorney to restore withdrawn funds to a trust account if the right of the attorney to receive the funds has been disputed and the attorney is notified of the dispute within a reasonable time after the funds were withdrawn. Second, the respondent never placed the funds in a trust account hi the first place. The respondent had not earned all the funds at the time she deposited them to her personal account, and therefore she commingled client funds with her personal funds.

There is no merit to the claim that the Parkers had consented to the posting of confidential information on the respondent's website when Mrs. Parker wrote that they were looking forward to seeing their story on her website. As they apply to this case, Mass. R. Prof. C. 1.6 (a) and 9.1 (c) require the "communication of information reasonably sufficient to permit the client to appreciate the significance of the disclosure of confidential information before the disclosure is made. There is no evidence of any such communication by the respondent prior to the disclosure. In fact, the respondent acknowledges she had not even met the Parkers. It also is immaterial that the Parkers did not personally complain about the disclosure. Bar counsel may initiate an investigation of any conduct by a lawyer that may violate the Massachusetts Rules of Professional Conduct. See Rules of the Board of Bar Overseers § 2.1 (b)(2).

The respondent also argues that there was no evidence, other than hearsay, that she left a message on the telephone answering machine of the Parkers' other attorney demanding the withdrawal of their complaint with bar counsel as a condition of removing their confidential information from her website. The simple answer is that the respondent admitted in paragraph 93 of her amended answer to the petition for discipline (see docket #46) that she left a voice message. A taped message (Exhibit 75), which the special hearing officer properly could have determined is in her voice, contains the message in question. See also Exhibit 75 A - transcript of the voice message.

(c) Count III. The respondent argues that the December 13,1998, orders, which she is charged with disobeying after they were affirmed on appeal, was not a final order, and therefore may not be the basis for discipline. There is no basis to the argument. The respondent was ordered to do something and she was bound to comply with the orders. See Florida Bar v. Rubin, 546 So.2d 1001 (Fla. 1989). It does not matter that the orders were interlocutory. She could have sought a stay of the orders pending rehearing or appeal, see Matter of R.I. Select Comm'n Subpoena, 415 Mass. 890, 893 (1993); Ward v. Coletti, 10 Mass. App. Ct. 629 (1980), S.C., 383 Mass. 99 (1981), but she failed to pursue that course. In any event, she is charged with failing to obey the orders after they were affirmed on appeal, not at the time they issued. Bar counsel has chosen not to prosecute the respondent for the interim disobedience of the orders. The respondent's argument necessarily evaporates.

The respondent claims that the underlying basis for the contempt findings, namely, the fact that she filed frivolous motions that resulted in the imposition of fees and costs that she refused to pay after being ordered to do so, is erroneous. The issue has been decided previously and affirmed in an appeal to which the respondent was a party. She had a full and fair opportunity to litigate this issue in that matter, and she may not collaterally attack that decision in this proceeding. See Matter of Goldstone, 445 Mass. 551, 559-560 (2005).

The respondent has raised other issues concerning the evidentiary basis of the three-count petition for discipline, none of which has merit.

(d) Selective Prosecution. The respondent contends that bar counsel improperly refused to investigate and prosecute opposing counsel in Counts I and III. Whether bar counsel pursues discipline of others is irrelevant in these proceedings, see Matter of Tobin, 417 Mass. 92, 103 (1994), unless it can be shown that the respondent has been prosecuted selectively because of her membership in a protected class. See United States v. Armstrong, 517 U.S. 456, 464-465 (1996). There has been no such showing.

(e) Subpoenas. The respondent argues that parties to bar discipline proceedings are entitled to issue subpoenas to witnesses, pursuant to G. L. c. 233, § 8, to produce books and papers at a hearing before the special hearing officer. The statute provides that parties may issue subpoenas to witnesses to testify and produce books and papers at hearings before certain listed boards. The Board of Bar Overseers is not listed in the statute. Bar counsel contends that only the special hearing officer was authorized to approve such subpoenas, pursuant to the Board of Bar Overseers Rules, § 4.5. The precise question need not be decided because the special hearing officer's order quashing the subpoenas issued by the respondent was proper. It prevented the respondent from circumventing his prior ruling refusing to issue subpoenas to witnesses whose testimony was irrelevant to the issues before him. The respondent has failed to show how such testimony would have been relevant. Moreover, the respondent had made no request for a subpoena for production of books, papers, or documents in her original request for subpoenas to be issued pursuant to Board of Bar Overseers Rules, § 4.5.

(f) Protective Order. The board's chair properly entered a protective order directing "the hearings [to] be conducted in such a way as to preserve the confidentiality of... [certain] information." Indeed, one of the conditions of the judge's order permitting bar counsel to use impounded documents in Count I in this matter was that bar counsel keep the information confidential. Supreme Judicial Court Rule 4:01, § 20 (4), and Board of Bar Overseers Rules, § 3.22 (c), allow such an order, and contemplate an appeal to the single justice from the grant or denial of a protective order. The respondent took no such appeal. When the respondent persisted in using the true names of one of the individuals whose identity was protected, the special hearing officer properly excluded the public from the hearing.

(g) First Amendment. With respect to Counts I and II, the respondent argues that she had a First Amendment right to publish information, as she chose, on her website, and that any sanction for this conduct would constitute a violation of this right. An attorney's right to

speak, in contrast with that of other citizens, can be and, in fact, is constrained by ethical rules. Gentile v. State Bar of Nev., 501 U.S. 1030, 1071 (1991). With respect to Count I, the respondent had a duty to raise her First Amendment claims by challenging the court orders specifically impounding the information she published on her website - and, in raising them, refrain from disclosing the impounded material. See Mass. R.A.P. 16 (m). Instead, she simply defied the orders and belatedly claims here her First Amendment rights as a collateral defense to her disobedience of the court orders. See Florida Bar v. Rubin, supra; Florida Bar v. Gerstein, supra. Because the respondent failed to timely raise her First Amendment claims by challenging the validity of the court orders, it was misconduct to defy them, and she waived any such claim in this proceeding.

(h) Sanction. The board made the following statement about the sanction that should be imposed.

"Based on the misconduct in the three counts and the factors in aggravation, the special hearing officer recommended disbarment. We agree.

"The respondent's misconduct has been directed toward her clients, opposing parties, other counsel, judges and other adjudicators, witnesses and innocent third parties. She has ignored court orders repeatedly. She has made inflammatory arid contemptuous statements both verbally and in writing on her website and in this disciplinary proceeding. Her misconduct demonstrates her outright refusal to conform her conduct to professional standards and ethical requirements. As a result, the judicial system and the public must be protected from her repeated misconduct.

"In Counts I and II, the respondent repeatedly violated court orders, for which the standard sanction is at least a suspension. See, e.g., Matter of Cohen, [435 Mass. 7, 17 (2001)]; Matter of Tobin, supra. Moreover, in Count III, her misconduct resulted in the dismissal of her client's complaint. In Counts I and II, the respondent publicized confidential and private information on her website. In doing so, in Count I, she flouted court orders and publicized private information about a minor who was simply related to opponents in litigation. In Count II, she disclosed confidences of her former clients in retaliation for disputing her fee and refused to remove that information from her website. Such misconduct, standing alone[,] would warrant substantial discipline. Matter of Pool, 401 Mass. 460,5 Mass. Att'y Disc. R. 290 (1988) (disbarring attorney who furnished confidential client information to U.S. Attorney in order to collect his fee). Under the ABA Standards for Imposing Lawyer Sanctions § 6.21 (1992), '[d]isbarment is generally appropriate when a lawyer knowingly violates a court order or rule with the intent to obtain a benefit for the lawyer or another, and causes serious injury or potentially serious injury to a party, or causes serious or potentially serious interference with a legal proceeding.' In this case there can be no doubt that the respondent has repeatedly defied court orders over substantial periods of time, has revealed confidential information solely to harass, and has interfered with the judicial process and this disciplinary proceeding.

"The sanction should be more severe where, as here, the respondent has engaged in a pattern of misconduct, persisting over a matter of time, including prior related discipline. Matter of Saab, 406 Mass. 315 (1989). We agree with the special hearing officer that, 'Of utmost concern... is the respondent's patent refusal to comply with, or even acknowledge, her ethical responsibilities as an attorney.' In our view, her misconduct is analogous to that in Matter of Cobb, [445 Mass. 452 (2005)]. Our review of the record establishes that the respondent, like Cobb, has demonstrated rather convincingly by [her] quick and ready disparagement of judges, [her] disdain for [her] fellow attorneys, and [her] lack of concern for and betrayal of [her] clients that [s]he is utterly unfit to practice law.'

"Id. at 479."

I agree. The appropriate sanction here is disbarment, and an order disbarring the respondent from the practice of law shall enter.

FOOTNOTES

The names used are pseudonyms, as Count I arises out of a matter decided in the Juvenile Court Department. Standing Order 1-84 of the Juvenile Court, adopted May 8, 1984, states: "All juvenile court case records and reports are confidential and are the property of the court.

"Reports loaned to or copied for attorneys of record, or such other persons as the court may permit, shall be returned to the court after their use or at the conclusion of the litigation, whichever occurs first.

"Said reports shall not be further copied or released without permission of the court."

[2] On October 27, 2000, the Commonwealth nolle pressed the criminal charges against Mr. Parker.

[3]The final judgment in the civil action was amended to reflect that the plaintiff owed the defendants $261.25, plus interest.

[4]For example, at the prehearing conference, the respondent made the following comments:

"The one that says something for protective order. I mean, all that is hog wash." (Tr. 11/17/03, at 22)

"[Assistant Bar Counsel] has done everything to make sure this is a kangaroo court and this particular hearing goes along just the way the star chamber would want it, without any witnesses whatsoever." (Tr. 11/17/03, at 27)

"So that document that you wanted to find out whether I received is the most bogus document you would ever want to read. There are people she's named as she written a little something about them, but she has no intention of calling them as witnesses. It's valueless, it's hollow, it's a sack of cow chips. The smell of it — " (Tr. 11/17/03, at 27-28)

"Would you recuse yourself from being a Hearing Officer? You have shown your bias, you have shown you're not the brightest bulb in the chandelier . . . ." (Tr. 11/17/03, at 40-41)

"I'm old and deaf, so I can yell." (Tr. 11/17/03, at 43)

"But I'm sure as shit not going to pay for it. If [Assistant Bar Counsel] wants it, she can pay for it." (Tr. 11/17/03, at 66)

"No. Damn it, no. Unless you agree that you're carrying a kangaroo court here, unless you're willing to agree that you have a kangaroo court here, you cannot say to me this is Count 3 and you can't have any defense to it because it's all been decided before.... That's a wagon of detritus, cow chips horse manure." (Tr. 11/17/03, at 79)

"You're not going to accept them anyway, so who the hell cares. There, I swore." (Tr. 11/17/03, at 81)

"She [Assistant Bar Counsel] is a liar. She is a liar." (Tr. 11/17/03, at 82)

"If you're [Special Hearing Officer] going to really make this into a clown thing." (Tr. 11/17/03, at 88)

"Come on, cut the crap. Excuse me, I swore then. This protective order is a piece of foolishness at this point." (Tr. 11/17/03, at 108) On the first day of hearing, the respondent made the following statements:

"If [Bar Counsel] doesn't lie so much, I wouldn't need to interrupt." (Tr. 12/2/03, at 17)

"Mr. Brown was not on her witness list. Plus, his affidavit is, oh god, it belongs in a pig farm." (Tr. 12/2/03, at 18)