SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. 10-102
District Docket Nos. XIV-2004-0599E
and VC-2009-0900E

IN THE MATTER OF

RODRIGO H. SANCHEZ

AN ATTORNEY AT LAW

Decision

Argued: May 20, 2010

Decided: June 24, 2010

HoeChin Kim appeared on behalf of the Office of Attorney Ethics.

Thomas Ashley appeared on behalf of respondent.

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

This matter came before us on a recommendation for discipline (a one-year suspended suspension) filed by the District VC Ethics Committee ("DEC"). The Office of Attorney Ethics ("OAE") and respondent entered into a stipulation of facts in lieu of filing a complaint and an answer. In the stipulation, respondent admitted that he violated RPC 8.4(a)

(violate or attempt to violate the Rules of Professional Conduct), RPC 8.4(b) (commit a criminal act that reflects adversely on a lawyer's honesty, trustworthiness or fitness as a lawyer), and RPC 8.4(c) (engage in conduct involving dishonesty, fraud, deceit or misrepresentation).

Both the OAE and respondent agreed with the DEC's recommended discipline. We determine to impose a censure.

Respondent was admitted to the New Jersey bar in 2001. He has no disciplinary history.

Respondent represented Santos Joubert in connection with injuries suffered during a fight, in a bar, with National Basketball Association player Carmelo Anthony. At some point before September 26, 2004, Joubert told respondent that he had a videotape depicting Anthony and another man, who was severely beaten during that fight. Respondent believed that Joubert had a valid personal injury claim against Anthony.

Joubert told respondent that Calvin Andrews, a representative of BDA Sports, had contacted him and offered to review and buy the videotape. BDA Sports was Anthony's agent. Unfamiliar with this type of case, respondent consulted William D. Manns, an attorney with thirty years of experience. Manns advised respondent that, as long as respondent did not make any threats, the negotiations were "legitimate and legal."

On September 26, 2004, Joubert met with William Duffy, the president of BDA Sports, in New York City. Respondent did not attend this meeting. Joubert told Duffy that he had a videotape of Anthony's altercation, that he wanted compensation for the videotape, that the media would be interested in the videotape if Anthony did not pay for it, and that the release of the videotape could be damaging to Anthony. Duffy replied that Joubert was engaging in extortion. Nothing in the record reveals that either Duffy or Joubert informed respondent that Duffy had characterized Joubert's conduct as extortion.

Three days later, on September 29, 2004, Omar Shabazz, a friend of Joubert, met with Duffy in New York City. Shabazz demanded that Anthony pay $3,000,000 for the videotape. Respondent did not attend this meeting.

At some point after the September 29, 2004 meeting, respondent met with Richard Schreibstein, BDA Sports' attorney, in New York City, to negotiate a settlement.[1] Respondent told Schreibstein that, as previously reported to Duffy, Joubert would accept $3,000,000 for the videotape. Schreibstein asked respondent what Joubert would do if the money were not paid. Respondent replied that he did not know. He also told

[1] Schreibstein's name also appears in the record as Schriebstein.

Schreibstein that he did not know whether Joubert had approached anyone else about the videotape.

Respondent later received a settlement agreement from Schreibstein, modified it, obtained Joubert's signature, and returned it to Schreibstein. Respondent and Schreibstein arranged to meet, on November 23, 2004, at the Trump International Hotel in New York City. Respondent was told that a BDA Sports intern would deliver a settlement check.

On November 23, 2004, respondent met with Joubert in Central Park, across from the Trump International Hotel. Joubert told respondent that his cousin, Jason Pabon, had gone to the hotel to receive a check for $1,250,000 from BDA Sports, as the first installment for the videotape. While awaiting the end of the meeting between Pabon and BDA Sports, respondent was arrested by New York City police.

At some point during the negotiations, Schreibstein had advised respondent to "just walk away from this case." Respondent did not attend any of the meetings with BDA Sports representatives because he was concerned about his physical safety, his inexperience, and Schreibstein's advice, which caused him to question the propriety of his involvement in the negotiations. Unsure whether Schreibstein's advice was a warning or a strategy to remove him from the case, respondent consulted

Manns, who reiterated that, because respondent had not made any threats to BDA Sports, he had committed no crime. The New York District Attorney's Office later told respondent that his continued participation in the matter constituted aiding and abetting an attempted grand larceny.

Respondent was indicted in New York on two class B felony charges: first-degree grand larceny and first-degree criminal possession of stolen property. On October 12, 2006, he entered a guilty plea to one count of attempted grand larceny in the fourth degree, a class A misdemeanor, and agreed to cooperate with the New York District Attorney's Office in its prosecution of the co-defendants. He was sentenced to imprisonment for a term of time served.[2]

In the stipulation, respondent admitted that he violated RPC 8.4(a) and (b), which were described as "attempted commission of a criminal act that reflects adversely on his honesty, trustworthiness or fitness as a lawyer in other respects," and RPC 8.4(c).

The DEC conducted a hearing to permit respondent to be heard in mitigation. At that hearing, respondent introduced into evidence nine "character letters." Jeremy Saland, the lead prosecutor in the case against respondent, authored one of those

[2] The record does not indicate the amount of time that respondent served.

letters. According to Saland, respondent was cooperative, assisted the District Attorney's Office in its investigation, routinely apologized for his lack of judgment, was honest and forthright, had received sufficient punishment, and should be permitted to continue to practice law.

In the other letters, attorneys and non-attorneys attested to respondent's service to the community, his volunteer work, particularly mentoring young people, and his pro bono services.

At the DEC hearing, respondent provided background information. Before attending law school, he had been employed as a social worker. He testified that he considered himself to be both a social worker and a lawyer, using his law practice as a vehicle to effect social change.

Respondent stated that he had agreed to represent Joubert on an hourly basis and, therefore, would not have received a percentage of any amount that BDA Sports was willing to pay for the videotape. He acknowledged that he had made a "horrible" decision to take the case and that he should have withdrawn from it when he saw warning signs. The first sign was Schreibstein's warning that he should "walk away" from the case, which he misinterpreted as a tactic to remove him from the matter. The second sign occurred about three weeks later, when he read a newspaper article describing a similar incident involving an

extortion plot against a major league baseball player who was engaged in an extra-marital affair. At that time, he determined that his case was different, but he conceded that, in hindsight, he should have realized that the cases were similar. The third sign took place on the day of his arrest, when he had a telephone conversation about the Carmelo Anthony case with a "completely different person," which caused him to have reservations about going to the meeting in New York.

Nevertheless, relying on his conversations with Manns, who had advised him to discuss the matter only with Schreibstein and to ensure that the negotiations were in writing, respondent reassured himself that he was not doing anything wrong. He admitted that "my head said I was doing the right thing but I can't deny that I felt something in my stomach that I wasn't doing something right."

Respondent voluntarily refrained from practicing law for almost two years, from the date of his arrest, in November 2004, until he was sentenced in October 2006.

Although both the OAE and respondent urged us to impose a one-year suspended suspension, they had advanced different sanctions before the DEC. The OAE had urged a three-year suspension, citing In re Gen, 190 N.J. 112 (2007), a motion for reciprocal discipline case arising out of the attorney's

disbarment in New York. Gen received an indefinite suspension and was prohibited from applying for reinstatement until he was reinstated in New York, a period of at least seven years. Id. at 113. The OAE distinguished that case from the present matter:

> Here, however, unlike the attorney in Gen, respondent's involvement in the attempted grand larceny was unwitting, at best, and did not "strike at the heart of the proper administration of justice," thereby requiring such stern discipline. There is no evidence that respondent either directly communicated or was aware of any of the threats allegedly made to Anthony's agents by his client, Joubert. His indirect and unwitting involvement in the criminal conduct at issue is clearly distinguishable from the direct and knowing involvement of the attorney in Gen. Respondent, moreover, fully cooperated with New York law enforcement authorities and the OAE in its investigation.
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> [OAEb at 5.][3]

At the hearing, the presenter suggested that, if the DEC believed that respondent should not be suspended, it could impose either a suspended suspension or a suspension to be served retroactively to the date that he was sentenced, October 12, 2006.

Respondent, in turn, had urged the DEC to impose either a reprimand or a brief term of suspension.

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[3] OAEb refers to the OAE's November 16, 2009 brief submitted to the DEC.

The DEC noted that respondent admitted violations of RPC 8.4(a), (b), and (c). The DEC found that, although respondent's conduct was serious, it was aberrational and the result of inexperience. The DEC considered, in mitigation, respondent's cooperation with both law enforcement and ethics authorities; his embarrassment and remorse; his voluntary cessation of practice for almost two years; and the letter from the lead prosecutor, Saland. In addition, the DEC remarked that the numerous aggravating factors in Gen were not present in this case.

Opining that respondent does not pose a threat to the public, the DEC recommended a one-year suspended suspension. The DEC relied on the following cases, in which suspended suspensions were imposed: In re Kotok, 108 N.J. 314 (1987); In re Stier, 108 N.J. 455 (1987); In re Ichel, 126 N.J. 217 (1991); In re Alum, 162 N.J. 313 (1999); In re Gross, 186 N.J. 157 (2007), In re Kaplan, 196 N.J. 352 (2008); In re Riley, 196 N.J. 352 (2008); and In re Sweeney, 190 N.J. 60 (2007).

At oral argument before us, the OAE and respondent agreed with the DEC's recommendation of a one-year suspended suspension. Acknowledging the limited circumstances under which a suspended suspension may be imposed, the OAE further suggested a censure or three-month suspension as an alternate sanction.

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.

Respondent committed the crime of attempted grand larceny and engaged in conduct involving dishonesty, violations of RPC (a), (b), and (c). He exercised monumentally poor judgment in agreeing to represent Joubert in the Carmelo Anthony case. Although respondent initially believed that Joubert had a personal injury claim against Anthony, he quickly discovered that Joubert had more nefarious designs. He, thus, sought to distance himself from the case by arranging, but not attending, meetings between Joubert and representatives of BDA Sports. He sought advice from a more experienced attorney, who assured him that his conduct was not wrongful. Despite his misgivings, he convinced himself that his actions were appropriate and ignored warning signs to the contrary.

The OAE characterized respondent's involvement in the attempted grand larceny as "unwitting" and pointed to the lack of evidence that respondent either directly communicated threats, or was aware of Joubert's threats, to Anthony's agents.

In our view, respondent appears not venal, but incredibly naïve. We find that the letter from the assistant district attorney, Saland, persuasively supports the proposition that

respondent's conduct was aberrational and the result of poor judgment, rather than greed or malevolence. Indeed, had the extortion plot succeeded, respondent would not have benefitted financially. His fee agreement with Joubert was based on an hourly, not a contingent, fee.

The only remaining issue is the quantum of discipline to be imposed. As previously mentioned, the OAE relied on In re Gen, supra, 190 N.J. 112 (2007), in support of its initial recommendation for a three-year suspension. Although respondent and the attorney in Gen pleaded guilty to the same offense in New York, fourth-degree attempted grand larceny, the facts of the cases are not at all similar.

The attorney in Gen agreed to help his friend, James Meiskin, obtain restitution from John Shannon Olexa, who had stolen Meiskin's plasma television. In the Matter of Samuel Gen, DRB 06-215 (December 14, 2006) (slip op. at 5). Gen had no previous legal experience, having worked in non-law fields. Id. at 3-4. When Gen began to seek employment as a lawyer, he misrepresented on his resumé that he had previous legal experience. Id. at 4-5.

In representing Meiskin, Gen obtained advice from a criminal lawyer, who told him that a burglary victim could properly request lenient treatment of the defendant, as long as

they entered into an agreement providing for restitution in an amount equal to the physical damage that the victim sustained and a separate agreement waiving civil liability. Id. at 6.

Gen negotiated with Olexa's attorney, demanding $100,000 and offering a favorable victim statement from Meiskin. Ibid. Gen told James Powers, who identified himself as a family friend of Olexa, that only $10,000 of the $100,000 would be disclosed to the District Attorney's Office, because the higher amount would invite unwanted scrutiny into their arrangement. Id. at 8-9. Powers was an undercover detective. Id. at 7.

During settlement negotiations, Gen assented to Powers' proposed changes, including Meiskin's promise to refuse to cooperate with the District Attorney's Office and to refuse to testify. Id. at 10. Gen would not agree to reduce these terms to writing. Id. at 11. In addition, Gen pointed out the negative ramifications of Olexa's imprisonment, in the absence of an agreement, including the toll on his family. Id. at 9.

At a meeting arranged for the exchange of the funds and the written agreement, Powers asked Gen what would happen if they did not agree to the proposed terms. Id. at 12. Gen replied that he would file a lawsuit against Olexa for $250,000,000 and would press charges in the criminal case. Ibid. At the end of the meeting, Gen and Meiskin were arrested. Id. at 12-13.

The hearing panel in the New York disciplinary case observed that Gen "was an active proponent of the improper arrangement, and not merely a passive messenger or dupe." Id. at 16. The panel further noted that Gen deliberately disregarded the advice he had received and embarked on a course that he knew was improper. Ibid.

In turn, the Appellate Division of the Supreme Court of New York characterized Gen's conduct as "an extortionate scheme to obstruct justice by which respondent demanded payment in exchange for possibly perjurious testimony, conduct which strikes at the heart of the proper administration of justice." Id. at 17.

Gen was disbarred in New York, which permits reinstatement after seven years. Id. at 17,19. As noted above, in New Jersey, he received an indefinite suspension and was precluded from applying for reinstatement until he is reinstated in New York.

Here, respondent did not attempt to dissuade a client from cooperating with law enforcement authorities, to arrange for a client to testify falsely, or to "poison the well of justice." Whereas Gen obtained advice from another attorney and then ignored it, knowing that he was engaging in wrongdoing, respondent followed a trusted attorney's advice that his conduct was appropriate.

Although there are few, if any, cases that are factually similar to this case, In re Breslin, 171 N.J. 235 (2002), is instructive. In that case, Breslin, who was also a municipal court judge, received a large envelope containing $10,000 in cash from a former client. Id. at 241. The client told Breslin that the envelope contained his son's resumé for a position with the police department and asked Breslin to deliver the envelope to the police commissioner, Paul Haggerty. Ibid. Because Breslin was on his way to court at the time, he placed the envelope on his desk and did not examine its contents until he returned to his office. Ibid. Breslin then discussed the matter with Haggerty, who asserted that he did not want the envelope and that he would bring the matter to the attention of the Prosecutor's Office. Id. at 242. Breslin then posed a question to Haggerty, which Breslin termed as hypothetical, as to what he would do if someone had given him money and asked for a favor. Id. at 246.

Haggerty told the police chief about the attempted bribe. The police chief then reported the information to the Prosecutor's Office. Id. at 291. As a result, Breslin's former client was convicted of attempted bribery. Ibid.

Although we determined that Breslin was "sounding out" Haggerty's willingness to accept a bribe, the Court found no

evidence supporting that finding. Id. at 288. The Court also concluded that, because Breslin, in his capacity as an attorney, was not required to report the attempted bribe, he had not violated RPC 1.6 (under certain circumstances, a lawyer must reveal to proper authorities information reasonably believed necessary to prevent a client from committing an illegal or fraudulent act). Id. at 291. The Court found, however, that, Breslin, as a judge, was required to report the attempted bribe immediately to law enforcement officials.[4] Id. at 292.

The Court determined that Breslin violated RPC 1.2(e) (when a lawyer knows that a client expects assistance not permitted by law, the lawyer shall advise the client of relevant limitations on the lawyer's conduct) and imposed a censure. Id. at 292-93.[5]

In other contexts, attorneys who entered guilty pleas to, or were convicted of, various crimes have received censures or even reprimands. See, e.g., In re Musmanno, 197 N.J. 19 (2009) (attorney consented to the imposition of a censure after he was charged with impersonating a law enforcement officer and obstructing the administration of law, charges that were later

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[4] After a disciplinary panel, in a presentment filed by the Advisory Committee on Judicial Conduct, recommended Breslin's removal from judicial office, he tendered his resignation. Id. at 239.

[5] Three justices dissented, finding that Breslin had participated in a bribery scheme, and voted for his disbarment. Id. at 307.

reduced to a disorderly persons' offense; in an effort to avoid receiving a traffic summons, Musmanno misrepresented to a police officer that he was employed by the Prosecutor's Office and later made misrepresentations to the OAE); In re Poley, 196 N.J. 156 (2008) (censure for attorney who pleaded guilty to fourth-degree false swearing, in violation of N.J.S.A. 2C:28-2(a); attorney lied about his wife's conduct in an aggravated assault case, both to police officers and to the municipal court judge, by stating that his wife had stabbed him with scissors, when the wounds had been self-inflicted); In re Rhody, 191 N.J. 87 (2007) (reprimand for attorney who pleaded guilty to a one-count indictment for fourth-degree tampering with records, in violation of N.J.S.A. 2C:21-4(a); Rhody misrepresented facts and falsified records to obtain long-term disability benefits from an insurance company); In re Kapur, 189 N.J. 193 (2007) (attorney pleaded guilty to the disorderly persons' offense of volunteering false information to a law enforcement officer for the purpose of hindering the apprehension, prosecution, conviction or punishment of another for an offense, a violation of N.J.S.A. 2C:29-3a(7); after Kapur's son was involved in a one-car accident, Kapur switched places with his son at the scene and misrepresented to the police that he, not the son, had been driving the car; Kapur was censured); In re Devaney, 181 N.J. 296 (2004) (reprimand for

attorney who pleaded guilty to two third-degree crimes: theft of movable property, a violation of N.J.S.A. 2C:20-3(a), and obtaining a controlled dangerous substance by fraud, a violation of N.J.S.A. 2C:35-13; Devaney took prescription pads from two doctors, without their authorization, and used them to obtain prescription pain medication); In re Richardson, 177 N.J. 227 (2003) (attorney pleaded guilty in the United States District Court for the District of New Jersey to a one-count information charging him with the knowing and willful failure to keep and maintain Internal Revenue Service form 8300, a violation of 26 U.S.C.A. 7203; on twenty-four occasions, spanning more than ten years, clients who owned a restaurant gave Richardson cash amounts ranging from $1,000 to $10,000 for a total of $164,546; suspecting that his clients were attempting to hide income, Richardson failed to file and maintain IRS form 8300; the clients used the cash to buy real property in transactions in which Richardson represented them; he received a reprimand); and In re Birchall, 126 N.J. 344 (1991) (reprimand imposed on attorney who pleaded guilty to two counts of theft and one count of burglary resulting from two break-ins at his former marital residence).

The difficult issue here is the appropriate level of discipline. Although the DEC recommended a one-year suspended suspension, in all but one of the cases cited in the hearing

panel report in support of a suspended suspension, many years had lapsed between the attorney's misconduct and the imposition of discipline — the passage of time in those cases ranged from nine years to fourteen years. The one case in which the passage of time was not a factor, Sweeney, was a reciprocal discipline matter in which we imposed the same discipline ordered in Pennsylvania.

Here, respondent's conduct was serious. Nevertheless, the record strongly suggests that naiveté, inexperience, and a total lack of understanding of his involvement in an extortion plot played a great role in his actions. In a misguided fashion, he unwittingly participated in a matter that turned out to be criminal. He had no actual knowledge of the scheme — he did not attend any meetings in which the sale of the videotape was discussed.

We also considered the following mitigating factors: respondent's previous unblemished ethics history; the "character letters" presented on his behalf, primarily the letter submitted by Jeremy Saland, the New York Assistant District Attorney who prosecuted respondent; and respondent's substantial cooperation with the New York law enforcement authorities.

Balancing respondent's wrongdoing with the strong mitigation present in this matter, we determine that the public does not

need protection from respondent and that a censure is the appropriate discipline for his conduct.

Member Stanton 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
Louis Pashman, Chair

By: Julianne K. DeCore
Julianne K. DeCore
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Rodrigo H. Sanchez
Docket No. DRB 10-102

Argued: May 20, 2010

Decided: June 24, 2010

Disposition: Censure

Members	Disbar	Suspension	Censure	Dismiss	Disqualified	Did not participate
Pashman			X			
Frost			X			
Baugh			X			
Clark			X			
Doremus			X			
Stanton						X
Wissinger			X			
Yamner			X			
Zmirich			X			
Total:			8			1

Julianne K. DeCore
Julianne K. DeCore
Chief Counsel