SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 02-247

IN THE MATTER OF	:
WOLF A. SAMAY	:
AN ATTORNEY AT LAW	:

Decision

Argued: September 12, 2002

Decided: November 21, 2002

Richard J. Engelhardt appeared on behalf of the Office of Attorney Ethics.

Respondent waived appearance at oral argument.

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

This matter was before us on a motion for reciprocal discipline filed by the Office of Attorney Ethics ("OAE") pursuant to *Rule* 1:20-14(b), following the New Jersey Supreme Court's January 12, 2001 order and decision removing respondent from his position as municipal court judge in the City of Passaic. *In re Samay*, 166 *N.J.* 25 (2001).

Respondent was admitted to the New Jersey bar in 1980. He has no disciplinary history.

Following a recommendation by the Advisory Committee on Judicial Conduct ("ACJC") that respondent be removed from judicial office based on misconduct in three separate matters, the Court issued a formal complaint and order to show cause why respondent should not be removed from office and appointed a hearing panel to conduct a hearing, take evidence and report its findings. The hearing panel, consisting of an Appellate Division judge and two Law division judges, unanimously recommended respondent's removal, finding that he had violated Canons 1, 2A, 2B, 3A(1) and 3C(1) of the *Code of Judicial Conduct*, as well as *Rule* 2:15-8(a)(1) and (a)(6). The Court concluded, among other things, that respondent abused his judicial power, corrupted his judicial office to benefit his personal interest and to punish people for personal reasons, engaged in conduct prejudicial to the administration of justice and demonstrated a lack of respect for the law by giving false and misleading information to the police and by testifying less than truthfully before the ACJC and the hearing panel. As noted above, on January 12, 2001, the Court ordered respondent removed from judicial office.

For the reasons expressed below, we determined that respondent's infractions warrant a three-year suspension.

* * *

The Lazor Matter

Respondent's two sons attended the Collegiate School, a private school in the City of Passaic. Respondent had strong ties to the school for about twenty years, including service as a member, and later as president, of the school's board of trustees. He had fallen behind in his tuition payments because of an illness and lack of insurance coverage before his appointment as a municipal court judge. Respondent signed a promissory note for the balance of the tuition whereby he agreed to retire the debt through installment payments. John Lazor, Jr., the president of the school's board of trustees, believed that respondent's payment was delinquent. He sent respondent a July 3, 1996 letter asking him to cure the default in payment immediately, indicating that he would seek legal counsel if he did not hear from respondent within a few days.

Respondent replied to Lazor via a July 7, 1996 letter, which he signed "Wolf Samay, Esq., JMC." He testified that he used the "JMC" initials to "impress" upon Lazor that he was able to make his own decisions and to take care of his own financial problems, conceding that identifying himself as a judge in a personal letter was "wholly inappropriate." Respondent, thus, acknowledged that his use of the "JMC" initials was intentional. Finding respondent's explanation to be "totally lacking in credibility," the Court determined that he violated Code of Judicial Conduct Canon 1 (a judge must uphold the integrity and independence of the judiciary), Canon 2A (a judge should respect and comply with the law and should act at all times in a manner that promotes public confidence in the integrity and

impartiality of the judiciary), Canon 2B (a judge should not lend the prestige of office to advance the private interests of others) and *Rule* 2:15-8(a)(6) (conduct prejudicial to the administration of justice that brings the judicial office into disrepute).

The Jakubovic Matter

Benjamin Jakubovic was a councilman in Passaic. In 1993 he signed a resolution confirming respondent's appointment as municipal court judge. In 1996 he signed another resolution confirming respondent's reappointment to that position. In 1997 Jakubovic signed an ordinance increasing respondent's salary. Before his election as councilman, Jakubovic had served with respondent for a number of years on the Passaic Board of Adjustment.

In 1995 Jakubovic's wife, Susan Dauber, an attorney, obtained a temporary restraining order removing him from the marital home. Pursuant to a search warrant, several weapons belonging to Jakubovic were observed, but not seized. Respondent authorized the issuance of both the temporary restraining order and the search warrant. Later, a complaint was filed alleging theft of an automobile after a dispute developed between Jakubovic and Dauber. Because of his relationship with Jakubovic, respondent recused himself from presiding over court proceedings relating to those two matters.

On July 14, 1997 Jakubovic reported to the Passaic Police Department two incidents of domestic violence by Dauber. He alleged that, two weeks earlier, Dauber had harassed him by yelling at him, using obscene names and coarse language. Jakubovic further alleged that,

the prior day, Dauber had telephoned his residence twice at six o'clock in the morning and hung up when he answered. Jakubovic signed two petty disorderly persons complaints alleging harassment. After the police called respondent at about eleven o'clock on the evening of July 14, 1997, he authorized the issuance of a temporary restraining order and a search warrant. Although the police found no weapons when they executed the search warrant, respondent also authorized Dauber's arrest and her subsequent release on her own recognizance, without making a finding of probable cause. Dauber was arrested at midnight, while her three small children were asleep, and returned at three o'clock in the morning. As directed by the police, Dauber appeared in court later in the morning of July 15, 1997 for arraignment on the petty disorderly persons complaints. Respondent advised Dauber of the charges against her, accepted her not guilty plea, set bail and informed her she would be notified of a trial date. After Dauber raised the issue, respondent indicated that he would recuse himself. The charges were ultimately dismissed by the Family Part, which found that the conduct did not violate the statute.

The Court rejected respondent's explanation that he did not refer the matter to another judge because of the emergent nature of the domestic violence matter. There was no allegation that Dauber had made any threats against Jakubovic or that he was in fear. To the contrary, Jakubovic indicated that he was leaving for vacation and the police had so advised respondent. Moreover, there was no indication that Dauber had ever used or threatened to use the weapons that had been observed during the execution of the 1995 search warrant. The

Court, thus, found that respondent should have advised the police to contact another judge, instead of participating in this matter.

The Court also rejected respondent's explanation for participating in Dauber's arraignment. Respondent contended that he was not aware that she would appear in court that morning, that the appearance involved *pro forma* proceedings and that the procedures followed were no different than those in any other matter. It was during the arraignment that respondent initialed the probable cause findings on the complaints signed by Jakubovic. Respondent, thus, set in motion the events resulting in Dauber's appearance before him on the morning of July 15, 1997 and failed to recuse himself, as he had in the earlier *Dauber-Jakubovic* matters. In this regard, the Court found as follows:

> Respondent issued a TRO and a search and arrest warrant for the wife of a councilman based on two suspicious domestic violence complaints despite a clear conflict of interest based on his relationship with the councilman. Even if the complaints were credible, no arrest warrant should have been authorized for the alleged petty disorder persons offenses. There was nothing in the circumstances that removed this case from the well-established rule requiring a complaint for a petty disorderly persons offense be prepared on a complaint-summons form without an arrest warrant. . . . Notwithstanding the obvious conflict of interest, previously recognized by respondent in 1995 when [Dauber] filed a similar complaint against [Jakubovic], respondent presided over the arraignment of the complaints against the councilman's estranged wife.
>
> [*In re Samay, supra,* 166 *N.J.* at 42]

The Court concluded that respondent violated Code of Judicial Conduct Canon 1, Canon 2A, Canon 3C(1) (a judge shall disqualify himself in a proceeding in which the judge's impartiality might reasonably be questioned) and *Rule* 2:15-8(a)(6).

The Grassie Matter

As mentioned earlier, respondent's sons attended the Collegiate School. On November 6, 1997 respondent's son, Patrick, was directed by his physical education teacher, David Grassie, to refrain from hanging from the rim of the basket while playing basketball. Earlier that year, Patrick had broken his arm while playing basketball at the school. Grassie and Patrick engaged in a verbal confrontation, resulting in a meeting the next day attended by the headmaster, respondent, respondent's wife, Patrick, Grassie and several of the students who had witnessed the incident. On November 11, 1997 respondent informed the headmaster that he would bring criminal charges against Grassie unless the headmaster fired Grassie within three days. The headmaster did not fire Grassie and on November 18, 1997, twelve days after the confrontation between Grassie and Patrick, respondent reported the matter to the Passaic Police Department. According to respondent's report, Patrick had informed him that Grassie had verbally assaulted him and threatened to slap him and "bash Patrick's head in and kill him" after a gym class.

After interviewing Patrick, who denied that Grassie had threatened to bash his head in or kill him, a Passaic detective prepared a complaint and warrant charging Grassie with

making terroristic threats, a crime of the third-degree. Respondent, not the detective, signed the complaint and warrant. Grassie was arrested on November 21, 1997 at about four o'clock on the afternoon before Thanksgiving. He was fingerprinted and remained in a jail cell until he was released about an hour later. The arrest warrant was signed by the deputy court clerk of the Passaic Municipal Court three days after Grassie's arrest. The arrest, thus, had been made without a proper warrant.

On November 24, 1997 Grassie appeared with counsel in court to be arraigned by respondent. When counsel remarked that respondent had signed the complaint, respondent replied ,"I am the complainant in my individual capacity." After counsel objected, respondent answered that he was simply advising Grassie of the charges and that no other judge was available. The matter was later remanded to another municipal court, where Grassie was acquitted of all charges.

The Court found that respondent should have recused himself *sua sponte*, noting that even if he had not previously been aware that the complaint that he had filed against Grassie was on his court docket that morning, he knew Grassie's name and knew what he looked like, having attended the conference at the school several weeks earlier. Moreover, the Court found incredible respondent's testimony that he reported the incident to the police out of concern for the safety of students at the school and that he signed the criminal complaint because the detective told him that a parent must sign a complaint when a child is the victim.

Instead, the Court determined that respondent "signed the complaint for revenge; indeed he admitted as much." *Id.* at 39.

The Court ruled that respondent violated Code of Judicial Conduct Canon 1, Canon 2A, Canon 2B, Canon 3C and *Rule* 2:15-8(a)(6). The Court noted as follows:

> Four months later [after the *Jakubovic* matter], after vindictively filing criminal charges against his son's gym teacher and having him arrested, respondent presided over the teacher's arraignment, despite his knowledge that doing so constituted judicial misconduct. The evidence established beyond a reasonable doubt that respondent corrupted his judicial office to benefit his personal interest and to punish people for personal reasons.
>
> [*Id.* at 42-43]

The Court also found that respondent gave false and misleading information to the police when reporting the incident and was less than truthful in his testimony before the ACJC and the hearing panel, demonstrating a lack of respect for the law. The Court further observed that respondent's motive in both the *Jakubovic* and *Grassie* matters was "venality and corruption of justice to advance his personal interest." *Id.* at 43. The Court concluded that respondent poisoned the well of justice because in *Jakubovic* and *Grassie*, he directly subverted and corrupted the administration of justice.

The OAE contended that respondent's conduct violated *RPC* 3.1 (asserting an issue the lawyer knows or reasonably believes is frivolous), *RPC* 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation) and *RPC* 8.4(d) (conduct prejudicial to the administration of justice) and urged us to impose a reprimand.

* * *

Following a review of the full record, we determined to grant the OAE's motion for reciprocal discipline. Where a motion for reciprocal discipline is based on "a final determination of judicial misconduct" by the Court, "that determination shall conclusively establish the facts on which it rests for purposes of an attorney disciplinary proceeding . . . . The sole issue to be determined . . . shall be the extent of final discipline to be imposed." *Rule* 1:20-14(b)(3); *In re Yaccarino*, 117 *N.J.* 175, 183 (1989) ("[T]he determinations made in judicial-removal proceedings are conclusive and binding in subsequent attorney-disciplinary proceedings.")

In this matter, we are confronted with three separate acts of misconduct committed by respondent in his capacity as a municipal court judge. Given the conclusiveness of the determinations made by the Court in the judicial removal proceeding, our task is to review respondent's misconduct and assess the appropriate discipline. We agree with the Court's analysis that, of the three matters, *Lazor* was the least serious. In that case, respondent signed a personal letter using initials identifying himself as a municipal court judge. Respondent acknowledged that, at the time that he signed the letter, he was aware that to do so was "wholly inappropriate." Had respondent's misconduct stopped here, perhaps a reprimand, as urged by the OAE, would be proper.

Respondent's transgressions, however, went far beyond merely signing a letter with "JMC" initials. In two other matters, respondent, for vengeful reasons, abused his judicial power to further his own personal interests. Beyond that, he exhibited a callous disregard for the rights of others and a flagrant disdain for the truth and for our system of justice. In *Jakubovic*, respondent arranged for the arrest of the estranged wife of a councilman who had actively participated in respondent's appointment and subsequent reappointment to the municipal court, as well as in his salary increase. The circumstances of the arrest were particularly egregious – at midnight, Dauber was taken from her home where her three children were asleep and was not able to return until three hours later. Respondent's purported justification for issuing the temporary restraining order and the search and arrest warrants was devoid of merit. Although he contended that the matter was emergent, the record demonstrated that (1) the two alleged acts of harassment had occurred two days to two weeks before respondent was contacted; (2) no weapons were discovered during the search of Dauber's residence; (3) Jakubovic, the party alleging domestic violence, had not reported that he was in fear, but rather, stated that he was about to leave for vacation; (4) Dauber had not been accused of threatening Jakubovic, only of using "coarse" language and placing two telephone calls to his home early in the morning; and (5) pursuant to well-established procedures, an arrest warrant should not have issued for a complaint alleging petty disorderly persons offenses.

Respondent compounded the situation when he refused to recuse himself from the arraignment proceeding, despite his recusal from two other matters involving the same parties two years earlier. It was only after Dauber questioned whether respondent would recuse himself from proceeding over the trial that he indicated that he would.

Similarly, in *Grassie*, respondent abused his judicial powers to advance his personal interests. After the Collegiate school headmaster refused to fire Grassie as respondent had demanded, respondent reported to the police that Grassie had threatened to "bash" Patrick's head in and to kill him. According to Patrick, although Grassie had threatened to slap him, he made no such threat as respondent reported to the police. Respondent set in motion the circumstances leading to Grassie's arrest. Respondent, not the investigating detective, signed the complaint alleging that Grassie had made terroristic threats, a crime of the third-degree. As a result, Grassie was arrested, fingerprinted and placed in a jail cell for about an hour, all on the afternoon before the Thanksgiving holiday. As it turned out, the arrest had been improper, because the arrest warrant was not signed until three days after Grassie's arrest. As in *Jakubovic*, respondent presided over the arraignment of a defendant whose arrest he had orchestrated. Again, he failed to recuse himself. During the initial appearance, when Grassie's counsel observed that respondent was both the judge and the complainant, respondent replied that he had signed the complaint in his individual capacity. Respondent knew, or should have known, that he was precluded from participating as a judge in a matter where he was the complaining party.

Equally as disturbing as respondent's abuse of his judicial office was his misrepresentations to the police and his lack of candor before the ACJC and the hearing panel in the judicial removal proceedings. The Court found that respondent gave false and misleading information to the police when he reported that Grassie had threatened to kill his son. The Court also determined that respondent's testimony before the ACJC and the hearing panel was "less than truthful."

In summary, motivated by vindictiveness, respondent arranged for the arrest of two individuals; presided over their arraignments, despite the obvious conflict of interest; and, in one of the matters, lied about the circumstances both to the police and to two tribunals. Respondent, thus, violated *RPC* 3.3(a)(1) (candor toward a tribunal), *RPC* 8.4(c) and *RPC* 8.4(d). "When an attorney attempts to frame an innocent person in a criminal act, that attorney has demonstrated contempt for the administration of justice and has poisoned the well of justice. *In re Verdiramo*, 96 *N.J.* 183, 186, 475 *A.*2d 45 (1984)." *In re Pomerantz*, 155 *N.J.* 122, 137 (1998).

It is unquestionable that respondent's judicial misconduct negatively impacts his fitness as an attorney.

> Judicial misconduct that involves overreaching and misuse of judicial office for personal advantage can adversely reflect on and affect the individual's fitness to practice of law. *See, e.g., In re Vasser, supra*, 75 *N.J.* 357; *In re Hardt*, 72 *N.J.* 160 (1977). Acts of dishonesty, venality or greed will clearly implicate professional fitness. *See, e.g., In re Coruzzi, supra,* 98 *N.J.* 77. Furthermore, acts that undermine the integrity of the administration of justice are destructive of the legal

> profession itself, and reflect adversely on professional as well as judicial fitness. *Id.*
>
> [*In re Yaccarino*, 117 *N.J.* 175, 200 (1989)]

There remains the issue of discipline. The goal of disciplinary proceedings is not to punish the attorney, but to protect the interests of the public and the bar, mindful of the concerns of the individual involved. *In re Infinito*, 94 *N.J.* 50, 57 (1983). Attorneys who have engaged in conduct prejudicial to the administration of justice and in conduct involving dishonesty, fraud, deceit or misrepresentation have been met with long terms of suspension or disbarment. In the following cases, the Court determined that the attorney's misconduct was serious enough to warrant disbarment: *In re Boylan*, 162 *N.J.* 289 (2000) (attorney, while municipal court judge, defrauded city of money and property by reducing traffic violation fines and penalties for female defendants in exchange for sexual favors from those defendants); *In re Pajerowski*, 156 *N.J.* 590 (1998) (attorney paid a "runner" to solicit personal injury cases and helped his clients to file false medical claims); *In re Obringer*, 152 *N.J.* 76 (1997) (attorney stole funds from a court registry and made a false statement to a tribunal); *In re Conway*, 107 *N.J.* 168 (1987) and *In re Rigolosi*, 107 *N.J.* 192 (1987) (attorneys sought to obstruct justice by bribing a police officer and by tampering with a witness to obtain the dismissal of criminal charges against a defendant); *In re Edson*, 108 *N.J.* 464 (1987) (attorney advised his client and an expert witness to lie about evidence in two different matters before municipal courts).

In less egregious cases, however, the Court has found a three-year suspension sufficient. *See, e.g., In re Kornreich*, 149 *N.J.* 346 (1997) (attorney, who had been in an automobile accident, misrepresented to the police, her lawyer and a municipal court judge that her babysitter had been operating her vehicle and presented false evidence in an attempt to falsely accuse another of her own wrongdoing; two members of the Court voted for disbarment); *In re Gillespie*, 124 *N.J.* 81 (1991) (attorney pleaded guilty to wilfully aiding and assisting in the presentation of false corporate tax returns for a construction company); *In re Giordano*, 123 *N.J.* 362 (1991) (attorney participated in a scheme to obtain fictitious drivers' licenses for ineligible drivers and pleaded guilty to tampering with public records); *In re Cohen*, 120 *N.J.* 304 (1990) (attorney altered the filing date on a complaint filed after the statute of limitations had expired to mislead the court and opposing counsel that he had timely filed the complaint and misrepresented the status of the matter to the client); *In re Lunn*, 118 *N.J.* 163 (1990) (attorney handwrote and signed his wife's name to a statement that he then provided to an insurance company to corroborate his own personal injury claim, after his wife died, he stated in answers to interrogatories and under oath during a deposition that his wife had written and signed the statement); *In re Power*, 114 *N.J.* 540 (1989) (attorney advised a client not to disclose information to law-enforcement authorities about a stock-fraud investigation; the advice was given, not to protect the client, but the attorney, who feared that he was also a target of the investigation; the attorney also helped a client file a false insurance claim); *In re Kushner*, 101 *N.J.* 397 (1986) (attorney falsely stated in his

answer to a lawsuit and in a sworn certification filed with the court that his signature on a promissory note had been forged).

In our view, a suspension adequately addresses respondent's wrongdoing. We took into account respondent's previously unblemished record of more than twenty years. More significantly, although disbarment could be justified, we are not satisfied that respondent is beyond rehabilitation. As the Court stated in *In re Templeton*, 99 *N.J.* 365, 376 (1985):

> 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.

We are not convinced that protection of the public requires respondent's disbarment. Accordingly, a five-member majority voted to suspend respondent for three years. Four members voted for a one-year suspension, finding that, although respondent's transgressions were serious, a shorter suspension was warranted.

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 Wolf A. Samay
Docket No. DRB 02-247

Argued: September 12, 2002

Decided: November 21, 2002

Disposition: Three-year suspension

Members	*Disbar*	*Three-year Suspension*	*Reprimand*	*One-year Suspension*	*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:		5		4			

Robyn M. Hill 12/4/02
Robyn M. Hill
Chief Counsel