SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 15-281
District Docket Nos. XIV-2013-0405E and XIV-2013-0609E
Docket No. DRB 15-396
District Docket No. XIV-2011-0395E

IN THE MATTERS OF	:
	:
THOMAS G. FREY	:
	:
AN ATTORNEY AT LAW	:

Decision

Argued: November 19, 2015 (DRB 15-281)
March 17, 2016 (DRB 15-396)

Decided: May 3, 2016

Steven Zweig appeared on behalf of the Office of Attorney Ethics.

Respondent did not appear.[1]

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

These matters were before us for consideration on different dates. We have consolidated them into a single decision for purposes of efficiency.

[1] At the time of both oral arguments, respondent was incarcerated.

DRB 15-281 was before us on a recommendation for a reprimand filed by the District VIII Ethics Committee (DEC), based on its finding that, in one matter, respondent practiced law while suspended (RPC 5.5(a)(1)) and, thus, engaged in conduct prejudicial to the administration of justice (RPC 8.4(d)). In a second matter, the DEC dismissed the charged violation of RPC 8.4(a) (attempted violation of the RPCs) and RPC 8.4(d). We determined to impose a one-year suspension on respondent for his conduct in that matter.

DRB 15-396 was before us on a motion for final discipline filed by the Office of Attorney Ethics (OAE), pursuant to R. 1:20-13(c)(2), following respondent's guilty plea to Counts One and Seven in a seven-count indictment, filed in the United States District Court for the District of New Jersey, charging him with Conspiracy to Extort Under Fear of Economic Harm, in violation of 18 U.S.C. §§ 1951(a) and (b)(2), and Wire Fraud Conspiracy, in violation of 18 U.S.C. §§ 1343 and 1349. We recommend respondent's disbarment for his conduct in that matter.

Respondent was admitted to the New Jersey bar in 1989. At the relevant times, he maintained an office for the practice of law in Metuchen. Respondent was temporarily suspended on June 11, 2013, in connection with the criminal charges that are the

subject of the OAE's motion for final discipline (DRB 15-396). In re Frey, 214 N.J. 7 (2013). He remains suspended to date.

In 2007, respondent received a reprimand for failure to safeguard funds (RPC 1.15(a)), misrepresentation (RPC 4.1(a)(1) and RPC 8.4(c)), and conduct prejudicial to the administration of justice (RPC 8.4(d)). In re Frey, 192 N.J. 444 (2007). Specifically, he misrepresented to the listing real estate agency and the seller's attorney that he had received the full amount of a deposit in a real estate transaction in which he was representing the buyer. Later, during the pendency of a lawsuit filed by the seller seeking the deposit monies as damages, respondent returned the deposit monies to the buyer, without the seller's authorization.

DRB 15-281 (The District VIII Complaint)

The Julian Matter (Count One)

On July 12, 2013, Emil Philibosian, the tax appeal attorney for the Township of Edison, appeared before the Middlesex County Tax Board (MCTB). On that date, respondent's name was listed on the MCTB calendar of appeals as the attorney for Thomas Julian and his wife in one matter and for respondent and his wife in another matter. According to Philibosian, when the cases were called, respondent answered that he was there on behalf of himself and the Julians. Thus, it was Philibosian's perception

that respondent intended to represent the Julians before the MCTB.

Philibosian had been aware of respondent's temporary suspension. He testified that, during a break at the July 12, 2013 hearing, he confronted respondent about it. According to Philibosian, respondent replied that he was permitted to finish the matters he had been working on at the time he was suspended.[2] Philibosian could not recall respondent informing him that Julian intended to proceed with his case on a pro se basis.

On July 22, 2013, Philibosian reported to the Office of Attorney Ethics (OAE) Director, Charles Centinaro, that respondent had "appeared" before the tax board on July 12, 2013 "in connection with" both appeals. On August 30, 2013, the OAE sent Philibosian's letter to respondent and asked him to provide a written reply to the allegations by September 19, 2013.

In a September 15, 2013 letter to the OAE, respondent stated:

> On the date or dates in question, there was no legal representation . . . Emil Philibosian will corroborate this. The week prior to the date in question, I did represent myself in a property tax appeal. For the second case referenced, I requested an adjournment as the property owner was not able to attend for personal reasons. The adjournment was granted. On the subsequent

[2] The Julians' appeal had been filed on or before April 1, 2013, before respondent's June 11, 2013 temporary suspension.

> date scheduled, I was present to discuss the preparation of the property tax appeal [sic] however I did not represent the homeowner. This was discussed with Emil Philibosian prior to the hearing. The record would reflect that representation was not *provided*.
>
> On a separate note, I have previously requested that I be permitted to continue representation on two stale matters, one municipal matter and three bankruptcy filings. Currently these cases are in limbo as I have not received permission to complete the representation. Each of these cases were started well before my suspension and to change representation now would likely jeopardize the individuals involved. Please advise as to whether or not I can continue these cases. Thank you.
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> [Ex.OAE7.]

Respondent testified that, in his September 15 letter, he was "simply inquiring if it was possible" to continue with representations that pre-dated the suspension. On September 23, 2013, the OAE advised respondent that he could not.

Julian, who was the Jersey City deputy chief of police, and respondent were friends who socialized and met for lunch once a week. Julian also paid respondent, a CPA, to prepare his tax returns. In addition, respondent had represented Julian in a real estate matter "years ago." Julian described respondent as a "very compassionate and understanding" person, who gave free tax advice to people who were economically disadvantaged.

Although Julian had represented himself in prior property tax appeals, he engaged respondent in March 2013 to file and prepare the tax appeal at issue in this disciplinary matter. Julian did not compensate respondent for that work.

In June 2013, Julian learned that respondent's law license had been suspended. Thus, he knew that respondent would not be representing him at the July 12, 2013 tax appeal hearing.

On the morning of July 12, 2013, Julian had a family emergency that prevented him from attending the MCTB hearing. At Julian's request, and as a favor to his friend, respondent sought an adjournment of the proceeding. The request was granted, and the matter was carried to July 24, 2013.

Contrary to Philibosian's testimony, respondent testified that he had made no mention of his suspension to Philibosian at the July 12, 2013 hearing. Rather, that conversation had taken place on July 24, 2013, before the Julians' case was called. Further, respondent denied having told Philibosian that he was permitted to complete those cases that he had begun prior to the suspension.

Respondent claimed that Philibosian's July 22, 2013 letter to Centinaro was dated incorrectly, despite the fax stamp reflecting that it was sent to the OAE on that date. Respondent

insisted that "Tom Julian was there when Mr. Philibosian and I spoke."[3]

Julian testified that, on the morning of the rescheduled hearing, that is, July 24, 2013, he and respondent arrived early so that respondent could inform Philibosian of his suspension. Although respondent's name appeared on the July 24, 2013 hearing calendar, Philibosian testified that he could not recall whether respondent was there and appeared on the Julians' behalf. Philibosian explained that, when a matter is carried, it is not unusual for the attorney's name to remain on the list because "[i]t's not up to him to get his name on or off of that list." Rather, that was within the "administration's control." Thus, he said, "I can't sit here today and say, yeah, Mr. Frey tried that case or did not."

According to Julian, when his matter was called, he and respondent sat next to each other at the front table. Julian emphasized, however, that respondent remained silent and did not say anything to him during the proceeding. In short, respondent did not represent him at the hearing.

Respondent agreed that, at the July 24, 2013 hearing, he had not provided Julian with any legal services or advice. He

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[3] Julian denied being privy to the conversation between respondent and Philibosian.

was present for the purpose of answering the MCTB's questions regarding the preparation of the Julians' appeal form, if asked.

OAE disciplinary investigator Alan Beck testified that, at a December 16, 2013 interview, respondent denied that he had represented either himself or Julian as an attorney in the tax appeal matters. Beck did not interview Julian.

The Good Care Matter (Count Two)

Respondent represented Good Care Invalid Coach (Good Care), whose license had been suspended by the Department of Health, Office of Legal and Regulatory Compliance, following an inspection. Brigid O'Neill, a Deputy Attorney General, testified that, in a July 26, 2013 letter, respondent requested a hearing on behalf of Good Care. The letter was written on letterhead that stated "A Professional Corporation" underneath respondent's name. O'Neill understood this to be respondent's law office letterhead. According to O'Neill, after respondent sent the letter, he became Good Care's attorney of record in the matter.

O'Neill explained that the rules governing administrative law proceedings allow a party to (1) represent itself, (2) be represented by an attorney, (3) be represented or assisted by a non-attorney who is permitted to make an appearance in a contested case under R. 1:21-1E, or (4) be represented by a law

graduate or student under R. 1:21-3B. A non-lawyer applicant, however, was required to seek permission to appear and certify that he or she was not a suspended or disbarred attorney. Further, a company is required to be represented by an attorney, although an employee or administrator of the company may represent the company instead. Thus, O'Neill testified, in an Office of Administrative Law (OAL) proceeding, she would negotiate only with a lawyer authorized to represent the company or a principal of the company who had requested permission to represent it.

A conference call with Administrative Law Judge James A. Geraghty was scheduled for October 8, 2013. Prior to that call, O'Neill learned of respondent's guilty plea and his temporary suspension. When the call took place, she was "flabbergasted" that respondent was taking part in it. At some point, O'Neill interrupted, saying "Correct me if I'm wrong, Mr. Frey, but I don't believe that you're . . . currently authorized to practice law in the State of New Jersey." She testified that respondent replied: "That's right, I'm suspended." At that point, Judge Geraghty asked respondent "is this your company?" When respondent answered no, the judge stated: "Well, that's easy. You can't represent them." Nevertheless, according to O'Neill, "we continued to finish the phone call, set a hearing date, and

I was surprised the entire time, and that was it." O'Neill testified that respondent did not ask to proceed as a non-attorney.

On October 16, 2013, eight days after the conference call, respondent sent a letter to O'Neill on letterhead that had replaced "A Professional Corporation" with "BUSINESS CONSULTANT." Among other things, the letter stated that Yousif Abdelrazig, Good Care's owner, had requested that respondent "continue to represent him in a non-legal capacity given [respondent's] familiarity with his business and the industry." According to O'Neill, there had been no discussion, during the conference call, regarding respondent's representing Good Care as a business consultant.

By letter dated November 6, 2013, O'Neill brought the matter to the OAE Director's attention. The next day, O'Neill sent a letter to Abdelrazig, informing him that respondent was not authorized to represent Good Care and, therefore, the negotiation of a settlement would have to take place through new counsel or Abdelrazig. Eventually, Good Care retained a different lawyer, and the case was settled.

On cross-examination at the ethics hearing, O'Neill conceded that she had not been aware that respondent was a CPA or that he had served as Good Care's accountant and prepared its

tax returns for the previous ten years. Nevertheless, O'Neill believed that a CPA would not be authorized to appear on behalf of an entity unless the CPA were a principal of the company and had received permission.

With respect to the Good Care matter, respondent asserted that the July 26, 2013 letter requesting a hearing was written on "non-legal" letterhead that he used for his payroll and bookkeeping clients. He had different letterhead for his law practice, which identified him as an attorney at law. He did not use that letterhead in the Good Care case because he was suspended. Moreover, he was unfamiliar with the rules that prohibited a suspended attorney from appearing in administrative law matters.

Respondent testified that he never practiced law and, therefore, never advertised as an attorney. Rather, he has "always done taxes." He explained: "I've never practiced law and I've never held myself out for the practice of law. So in other words, I've never advertised as an attorney." His office sign indicates both "Certified Public Accountant" and "Counselor at Law."

Respondent claimed, on the one hand, that he never sent a letter to his clients informing them of his suspension because he has "no true legal clients." On the other hand, he claimed

that he did affirmatively notify his clients of the suspension. Respondent conceded, however, that he had three bankruptcy matters pending, but stated that "you don't have to be an attorney to represent somebody in a bankruptcy matter." He also had one municipal traffic court matter.

According to OAE disciplinary investigator Beck, during the December 16, 2013 interview, respondent stated that he had known Abdelrazig for a number of years, that he had served as Good Care's accountant for a number of years, and that he was "just trying to help him resolve this matter." Beck did not interview Abdelrazig.

The DEC dismissed the first count of the ethics complaint. Given the inconsistent testimony between Philibosian, on the one hand, and respondent and Julian, on the other, the DEC determined that the OAE had failed to establish, based on clear and convincing evidence, that respondent either had practiced law while suspended, a violation of RPC 5.5(a)(1), or attempted to practice law while suspended, a violation of RPC 8.4(a) and RPC 8.4(d).

Specifically, the DEC found that respondent had filed the Julians' tax appeal prior to his suspension. Further, although both hearings were scheduled after the suspension was in place, respondent and Julian testified that respondent neither spoke on

Julian's behalf at the hearing nor directed or advised him regarding that matter. Philibosian, the DEC noted, "could not accurately remember whether or not Respondent acted on behalf of Mr. Julian at the hearing," and the OAE investigator never interviewed Julian.

The DEC upheld the charges of the second count of the complaint, finding that the clear and convincing evidence established that respondent had practiced law while suspended, a violation of RPC 5.5(a)(1) and RPC 8.4(d), when he sent letters on behalf of Good Care "to negotiate a settlement" and when he participated in the telephone conference call with Judge Geraghty and O'Neill. Moreover, respondent acted in "direct contravention" of the OAE's letters expressly stating that respondent was barred from acting as counsel to any clients, including those whose representation had commenced prior to the suspension. Finally, the DEC found, respondent's ignorance of the procedural rules prohibiting his representation of Good Care did not excuse his misconduct.

In mitigation, the DEC considered respondent's belief that he could act on Good Care's behalf in his role as its accountant and that he did not act as an attorney during the conference call. Thus, respondent's conduct "did not rise to the level of a significant ethical violation which would be prejudicial to the

general public." In aggravation, the DEC noted respondent's prior reprimand and the fact that respondent was suspended at the time of "this ethics violation."

The DEC recommended the imposition of a reprimand.

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

As the DEC found, the record lacked clear and convincing evidence to sustain the "attempt" charge in count one of the complaint. Although respondent had entered an appearance on the Julians' behalf when he filed the appeal, he never actually represented the Julians before the MCTB.

On its face, respondent's request that the first hearing be adjourned might be construed as the practice of law. He was identified as the Julians' lawyer on the MCTB's list and he spoke on Julian's behalf in making the request. However, in In re Jackman, 165 N.J. 580, 586 (2000), the Supreme Court declared that "[o]ne is engaged in the practice of law whenever legal knowledge, training, skill, and ability are required." In this case, respondent's request for an adjournment on Julian's behalf did not constitute the actual practice of law. Indeed, if Julian, who had handled his own tax appeals in the past, had been able to attend the hearing, he would have been perfectly

capable of requesting a postponement, an act that certainly does not require legal knowledge, training, skill, or ability. However, he was dealing with a family emergency and unable to appear before the MCTB to make the request himself. Therefore, he asked his friend, respondent, who was present on his own matter, to make that request for him.

Respondent did not "attempt" to practice law at the second hearing. Both he and Julian testified that, although they sat together during the MCTB's review of the appeal, respondent said nothing to Julian, who spoke on his own behalf. Respondent's sole reason for being at the table with Julian was to answer any questions that the MCTB had regarding the application itself, which respondent had prepared and filed prior to his suspension.

Philibosian's testimony did not contradict either respondent's or Julian's version of what had transpired at the MCTB hearing. Indeed, Philibosian could not recall whether respondent had been present at the actual hearing or whether respondent had "tried that case or did not."

For the above reasons, we, like the DEC, find that the record lacks clear and convincing evidence that respondent had attempted to practice law, as alleged in the first count of the complaint. Accordingly, we dismiss those charges.

However, the record clearly and convincingly establishes that respondent did practice law in the Good Care matter by participating in the conference call with Judge Geraghty and DAG O'Neill. Respondent's request for a hearing, however, required no legal knowledge, training, skill, or ability, and, therefore, Good Care was capable of making that request. Moreover, there was nothing about respondent's letter making that request on Good Care's behalf that suggested he was doing so in his capacity as an attorney. The letterhead did not identify respondent as an attorney. Further, in the letter itself, respondent did not state that he was an attorney or that he represented Good Care in the matter. The letter simply stated that Good Care wanted a hearing. Thus, the record lacked clear and convincing evidence that respondent had engaged in the practice of law when he made a request for a hearing on Good Care's behalf.

Respondent's participation in the conference call is a different matter, however. First, by the time of that call, respondent was well aware that the temporary suspension prohibited him from representing clients in matters that commenced prior to the suspension because the OAE had so specifically informed him. Second, although the record does not contain a copy of a transcript of that conference call, as

O'Neill testified, respondent was confronted about the suspension, acknowledged the suspension, and was told by the judge that, under the circumstances, he could not represent Good Care. Yet, he proceeded to participate in the call anyway.

The New Jersey Administrative Code contains strict requirements governing who may represent a party in an administrative proceeding. Specifically, under N.J.A.C. 1:1-5.1, a party may represent himself or herself, or be represented by (1) an attorney authorized to practice law in this State, (2) by a non-lawyer permitted to make an appearance in a contested case by R. 1:21-1(e), or (3) by a law graduate or student pursuant to R. 1:21-3(b). Further, "a corporation must be represented by an attorney." Ibid. Under this regulation, respondent's participation in the conference call could have occurred only in his capacity as Good Care's attorney. He made no application for permission to represent Good Care as a non-attorney and, indeed, could not do so, as a matter of law.[4]

Finally, respondent's ignorance of N.J.A.C. 1:1-5.1 does not excuse his participation in the conference call. He knew he was suspended; the OAE told him that he could not represent any clients; and Judge Geraghty, upon learning that he was

[4] N.J.A.C. 1:5.4(b)(1)(i) requires a non-lawyer applicant to certify that he or she is neither suspended nor disbarred and, further, that he or she will not receive a fee for the appearance.

suspended, clearly stated to respondent that, as such, he could not represent Good Care. There is no evidence that respondent attempted to clarify that he was not participating as Good Care's attorney but rather as a non-attorney. He made that claim only after the conference call.

RPC 5.5(a)(1) prohibits an attorney from "practic[ing] law in a jurisdiction where doing so violates the regulation of the legal profession in that jurisdiction." Under RPC 8.4(d), "[i]t is professional misconduct for a lawyer to . . . engage in conduct that is prejudicial to the administration of justice." By practicing law while suspended, respondent committed a per se violation of RPC 5.5(a)(1) and RPC 8.4(d). By participating in the conference call on Good Care's behalf, respondent engaged in the unauthorized practice of law, a violation of both rules.

There remains for determination the appropriate quantum of discipline to be imposed for respondent's misconduct.

The level of discipline for knowingly practicing law while suspended ranges from a lengthy suspension to disbarment, depending on the presence of other misconduct, the attorney's disciplinary history, and aggravating or mitigating factors.[5]

[5] But see In re Phillips, 216 N.J. 584 (2014), a three-month suspension was imposed on a defaulting attorney who had practiced law while suspended because there was no proof that he did so knowingly.

See, e.g., In re Brady, 220 N.J. 212 (2015) (one-year retroactive suspension imposed on attorney who, after a Superior Court judge had restrained him from practicing law, represented two clients in municipal court, and appeared in a municipal court on behalf of a third client, after the Court had temporarily suspended him; the attorney also failed to file a R. 1:20-20 affidavit following the temporary suspension; significant mitigating factors included the attorney's catastrophic illness and other circumstances that led to the dissolution of his marriage, the loss of his business, and the ultimate collapse of his personal life, including becoming homeless, and, in at least one of the instances of his practicing while suspended, his desperate need to provide some financial support for himself; prior three-month suspension); In re Macchiaverna, 218 N.J. 164 (2014) (in a default, one-year suspension imposed on attorney who, during a one-month period of temporary suspension for failing to pay the administrative costs related to a reprimand, continued to represent clients by writing letters to various courts and opposing counsel and by submitting an application seeking appointment as a private prosecutor; prior reprimand and censure); In re Bowman, 187 N.J. 84 (2006) (one-year suspension for attorney who, during a period of suspension, maintained a law office where he met with

clients, represented clients in court, and acted as planning board solicitor for two municipalities; prior three-month suspension; extremely compelling circumstances considered in mitigation); In re Marra, 170 N.J. 411 (2002) (Marra I) (one-year suspension for practicing law in two cases while suspended and substantial recordkeeping violations, despite having previously been the subject of a random audit; on the same day that the attorney received the one-year suspension, he received a six-month suspension and a three-month suspension for separate violations, having previously received a private reprimand, a reprimand, and a three-month suspension); In re Saint-Cyr, 210 N.J. 615 (2012) (in a default matter, two-year suspension imposed on attorney who practiced while suspended in three client matters); In re Wheeler, 140 N.J. 321 (1995) (Wheeler I) (two-year suspension imposed on attorney who practiced law while serving a temporary suspension for failure to refund a fee to a client; the attorney also made multiple misrepresentations to clients, displayed gross neglect and pattern of neglect, engaged in negligent misappropriation and in a conflict of interest situation, and failed to cooperate with disciplinary authorities);[6] In re Marra, 183 N.J. 260 (2005) (Marra II)

[6] In that same order, the Court imposed a retroactive one-year suspension on the attorney, on a motion for reciprocal discipline, for his retention of unearned retainers, lack of

(three-year suspension for attorney found guilty of practicing law in three matters while suspended; the attorney also filed a false affidavit with the Court stating that he had refrained from practicing law during a prior suspension; the attorney had received a private reprimand, two three-month suspensions, a six-month suspension, and a one-year suspension also for practicing law while suspended); In re Cubberley, 178 N.J. 101 (2003) (three-year suspension for attorney who solicited and continued to accept fees from a client after he had been suspended, misrepresented to the client that his disciplinary problems would be resolved within one month, failed to notify the client or the courts of his suspension, failed to file the affidavit of compliance required by Rule 1:20-20(a), and failed to reply to the OAE's requests for information; the attorney had an egregious disciplinary history: an admonition, two reprimands, a three-month suspension, and two six-month suspensions); In re Wheeler, 163 N.J. 64 (2000) (Wheeler II) (attorney received a three-year suspension for handling three matters without compensation, with the knowledge that he was suspended, holding himself out as an attorney, and failing to comply with Administrative Guideline No. 23 (now R. 1:20-20) relating to suspended attorneys; prior two-year suspension for practicing

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diligence, failure to communicate with clients, and misrepresentations.

while suspended); In re Kasdan, 132 N.J. 99 (1993) (three-year suspension for attorney who continued to practice law after being suspended and after the Court expressly denied her request for a stay of her suspension; she also failed to inform her clients, her adversary and the courts of her suspension, deliberately continued to practice law, misrepresented her status as an attorney to adversaries and to courts where she appeared, failed to keep complete trust records, and failed to advise her adversary of the whereabouts and amount of escrow funds; prior three-month suspension); In re Walsh, Jr., 202 N.J. 134 (2010) (attorney disbarred on a certified record for practicing law while suspended by attending a case conference and negotiating a consent order on behalf of five clients and making a court appearance on behalf of seven clients; the attorney was also guilty of gross neglect, lack of diligence, failure to communicate with a client, and failure to cooperate with disciplinary authorities during the investigation and processing of these grievance; the attorney failed to appear on an order to show cause before the Court; extensive disciplinary history: reprimanded in 2006, censured in 2007, and suspended twice in 2008); In re Costanzo, 128 N.J. 108 (1992) (attorney disbarred for practicing law while serving a temporary suspension for failure to pay administrative costs incurred in a

prior disciplinary matter and for misconduct involving numerous matters, including gross neglect, lack of diligence, failure to keep clients reasonably informed and to explain matters in order to permit them to make informed decisions about cases, pattern of neglect, and failure to designate hourly rate or basis for fee in writing; prior private reprimand and reprimand); and In re Goldstein, 97 N.J. 545 (1984) (attorney disbarred for misconduct in eleven matters and for practicing law while temporarily suspended by the Court and in violation of an agreement with the Disciplinary Review Board that he limit his practice to criminal matters). But see In re Kersey, 185 N.J. 130 (2005) (the Court agreed with our determination that a reprimand was sufficient discipline for an attorney who was disbarred in New Hampshire for disobeying a court order for the production of his files after a suspension and practicing law while suspended in that state;[7] the attorney filed pleadings with a New Hampshire court and was involved in federal court cases; the attorney asserted -- and we found -- that in the state case he was defending against an attorney's fee awarded against him personally and therefore acting pro se, as the real party in interest; in the federal case, we found no evidence that there was a federal court order prohibiting the attorney from

[7] In New Hampshire, a disbarred attorney may petition for reinstatement after two years.

practicing in federal courts; thus, the reprimand imposed was based solely on the attorney's failure to comply with a court order; prior reprimand).

Based on our review and analysis of relevant case law, a one-year suspension represents the threshold discipline for practicing while suspended. Those matters resulting in disbarment or longer terms of suspension involved attorneys who represented numerous clients while suspended, who committed other unethical acts, and who had a significant prior ethics history. Although respondent has a prior history, it is not as extensive as that of attorneys who received long terms of suspension or who were disbarred. Moreover, his conduct was limited to a single client matter. Thus, a one-year suspension is warranted for respondent's misconduct in this matter.

Member Zmirich did not participate.

* * *

DRB 15-396 (Motion for Final Discipline)

On June 3, 2013, respondent pleaded guilty before the Honorable Joel A. Pisano, United States District Judge, for the District of New Jersey, to Counts One and Seven of a seven-count indictment. Count One charged respondent with Conspiracy to

Extort Under Fear of Economic Harm, in violation of 18 U.S.C. §§ 1951(a) and (b)(2), which states in relevant part:

> (a) Whoever in any way or degree obstructs, delays, or affects commerce or the movement of any article or commodity in commerce, by robbery or extortion or attempts or conspires so to do, or commits or threatens physical violence to any person or property in furtherance of a plan or purpose to do anything in violation of this section shall be fined under this title or imprisoned not more than twenty years, or both.
>
> (b) As used in this section—
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> . . . .
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> (2) The term "extortion" means the obtaining of property from another, with his consent, induced by wrongful use of actual or threatened force, violence, or fear, or under color of official right.

Count Seven charged respondent with Wire Fraud Conspiracy, in violation of 18 U.S.C. §§ 1343 and 1349. The relevant statutes state:

> § 1343. Fraud by wire, radio, or television
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> Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, transmits or causes to be transmitted by means of wire, radio, or television communication in interstate or foreign commerce, any writings, signs, signals, pictures, or sounds for the purpose of executing such scheme or artifice, shall be fined under this title or imprisoned not more than 20 years, or both.
>
> §1349. Attempt and conspiracy
>
> Any person who attempts or conspires to commit any offense under this chapter [18 USCS §§ 1341 et seq.]

> shall be subject to the same penalties as those prescribed for the offense, the commission of which was the object of the attempt or conspiracy.

In his plea colloquy, respondent admitted that, during the time period set forth in the indictment, he was a licensed attorney, as well as a certified public accountant. He explained that he engaged in a scheme with Robert Cusic, Jr., and another attorney identified as CC-1, to misrepresent to the victims, who were their clients, that the IRS was conducting an investigation that would result in their criminal prosecution, unless they retained respondent to represent them. Robert Cusic, Jr., was the victims' mortgage broker on certain of their investment properties and CC-1 represented the victims in connection with the purchase and sale of real estate investment properties. The victims were engaged in the business of owning and renting their properties to tenants. The purpose of the scheme was to collect legal fees that would be divided and to entice the victims to sell certain properties for which respondent would have a financial interest in the purchase.

On March 24, 2011, two of the victims met with CC-1 and engaged in a conference call with respondent and Cusic; they called another victim, who was living in Florida. Cusic told all the parties that two Internal Revenue Service (IRS) agents had approached him about the victims and inquired into the

legitimacy of their real estate holdings. He also stated that the Monmouth County Prosecutor's Office was investigating two of the victims for mortgage fraud because of their status as police officers. Cusic said the IRS agents had given him their business cards and respondent said he knew one of the agents. Respondent offered to call the agent and communicate to CC-1 any information he could obtain. Later that day, CC-1 called two of the victims and arranged another meeting for March 26, 2011, at respondent's office. CC-1 told the victims that it would be advisable for them to retain respondent to handle their legal and tax issues during the investigation. He further explained that, in order to retain respondent, they would need to provide a $10,000 retainer toward the estimated $20,000 fee.

On March 26, 2011, respondent and CC-1 met with the victims at respondent's office; one victim participated by phone. Respondent told the victims that he confirmed with one of the special agents that a criminal investigation was pending against them. Respondent then showed the victims business cards from the IRS agents that purportedly were left when the agents approached Cusic. The business cards, however, previously had been provided to respondent in connection with an unrelated matter.

Respondent told the victims that their fraud had been detected by the IRS through their tax returns and that those

returns needed to be amended. He offered to amend the returns and stated that, once that task was completed, he would contact the IRS. Respondent also told the victims that, because he had a special relationship with one of the agents, he could call that agent and have the case converted from a criminal tax investigation to an IRS desk audit (a civil matter). Respondent added that, in order for him to do so, the victims would have to pay a fee. He further stated that if they did not retain him, he would not intercede, and the matter would proceed criminally. Respondent advised the victims to distance themselves from the properties by hiring Cusic's property management company.

On March 29, 2011, one of the victims contacted the IRS and learned there was no pending investigation.

On March 30, 2011, respondent accepted a $10,000 initial retainer, for both legal and accounting services, from one of the victims, who traveled from Florida to meet with respondent about the investigation. At a subsequent meeting, respondent represented to the victims that he was taking affirmative steps on their behalf to have the case converted to a civil matter. The other victims agreed to meet with respondent on April 2, 2011 to make payment and provide the requested tax documents.

In April 2011, after a meeting had been postponed, respondent told those victims who had not yet paid a retainer

that the investigation against them was proceeding. He continued to "warn" them of the consequences they would face if the IRS proceeded with its criminal investigation. Both CC-1 and Cusic repeatedly corroborated respondent's version of facts.

Respondent admitted during his plea allocution that, to his knowledge, the IRS had not conducted an investigation into the victims; that Cusic had not been approached by IRS agents; and that respondent did not have contact with the agent after the prior unrelated investigation had ended. Further, respondent's plea colloquy made clear that he had participated in interstate telephone calls in furtherance of the conspiracy on March 24, 2011, when he communicated with CC-1 to discuss the scheme, and on March 26, 2011, when he contacted one of the victims in Florida to discuss, among other things, his confirmation with the agent that there was an open criminal investigation. No additional payments were made by the victims due to the intervention of the federal authorities.

On April 27, 2015, the Honorable Anne E. Thompson, U.S.D.J., sentenced respondent to a term of imprisonment of twenty-seven months on each count to be served concurrently, followed by supervisory release for three years. Judge Thompson further ordered respondent to complete 300 hours of community

service over the period of supervisory release, and assessed a $25,000 fine ($12,500 on each count).

A criminal conviction is conclusive evidence of guilt in a disciplinary proceeding. R. 1:20-13(c)(1); In re Magid, 139 N.J. 449, 451 (1995); In re Principato, 139 N.J. 456, 460 (1995). Hence, the sole issue is the extent of discipline to be imposed. R. 1:20-13(c)(2); Magid, 139 N.J. at 451-52; Principato, 139 N.J. at 460.

In determining the appropriate measure of discipline, the interests of the public, the bar, and the respondent must be considered. "The primary purpose of discipline is not to punish the attorney but to preserve the confidence of the public in the bar." Principato, 139 N.J. at 460. Thus, we must take into consideration many factors, including the "nature and severity of the crime, whether the crime is related to the practice of law, and any mitigating factors such as respondent's reputation, his prior trustworthy conduct, and general good conduct." In re Lunetta, 118 N.J. 443, 445-46 (1989).

The Supreme Court has a long history of disbarring attorneys who engage in extortion. Most recently, in In re Cammarano, 219 N.J. 415 (2013), the Court confirmed its position that nothing short of disbarment would be imposed in cases involving extortion. Id. at 424. In that case, the attorney was

convicted of violating 18 U.S.C. §§ 1951(a) for accepting a bribe during his political campaign. Id. at 417. The Court stated, "Going forward, any attorney who is convicted of official bribery or extortion should expect to lose his license to practice law in New Jersey." Id. at 423.

In In re Communale, 54 N.J. 47 (1969), a business owner made payments to a local union officer to avoid labor trouble. Ibid. After some time, the union officer suggested he pay the attorney instead. Ibid. The attorney was paid a total of $15,600 for doing no work on behalf of the business owner. Id. at 48. Payments continued even after the business owner sent a letter to the attorney that "cease[d] retaining" him. Id. at 49. The Court found that the attorney participated in a scheme to extort money from the business owner. Id. at 50. The Court found the attorney's conduct "highly reprehensible and require[d] disbarment." Ibid.

Likewise, in In re Krakauer, 99 N.J. 476 (1985) and In re La Duca, 62 N.J. 133 (1973), the Court disbarred attorneys for similar conduct. In Krakauer, a construction company planned to build a senior citizen high-rise unit. Krakauer, supra, 99 N.J. at 477. The attorney, along with his client, a city councilman, threatened to appeal a legal action, which related to a tax abatement associated with the project, unless the construction

company paid $12,500; such an appeal would have jeopardized the company's financing. Ibid. The attorney was convicted in Superior Court of extortion (N.J.S.A. 2A:105-3(b)). Ibid.

In La Duca, the attorney was contacted by an individual who was seeking a reward for the return of certain stolen items that had come into his possession. La Duca, supra, 62 N.J. at 137. The attorney agreed to a fee of ten percent of the reward money and took affirmative steps on behalf of the client to arrange for the items to be returned, so that his client could collect the reward. Id. at 137-38. The attorney was told that the reward would be $7,500, but he insisted the client would be satisfied only with payment of $35,000. Id. at 139. Shortly after that communication, the attorney terminated his representation and the objects were never recovered. Ibid. The Court characterized the attorney's conduct as a "participation in an attempt to extort a ransom for the return of valuable stolen property to its owner" and disbarred the attorney. Ibid. But see In re Mirabelli, 79 N.J. 597 (1979) (attorney entered a guilty plea to bribery for suggesting that his client make a $2,500 payment to the assistant prosecutor to obtain a non-custodial sentence; the attorney induced the client to pay his outstanding legal fee, but the money was never paid to the prosecutor; the attorney received a three-year suspension based on his reputation, on the

various personal problems that affected his judgment, and on his cooperation) and In re Braunstein, 210 N.J. 148 (2012) (attorney was convicted of attempted criminal coercion by an official for threatening to sue his supervisor for workplace discrimination unless he was paid $750,000 and received a job promotion; he received a one-year suspension because his conduct amounted to an attempted extortion and no money was ever paid).

Here, although respondent's conduct predated the Court's decision in Cammarano, the Court clearly was following a long history of legal precedent for cases involving extortion and bribery. It should be noted, as well, that respondent pleaded guilty to the same statute under which Cammarano was convicted.

Moreover, respondent's crime was related to the practice of law. Particularly egregious is the fact that respondent engaged in a scheme with a mortgage broker and another attorney to victimize his own clients by extorting money from them for his own financial benefit. Respondent stood to profit both by the receipt of substantial legal fees and by an interest in certain properties if the scheme had succeeded.

The nature and severity of the crimes, along with his history of dishonest conduct, support respondent's disbarment. In our view, he is no longer worthy of the public's trust. For these reasons, respondent must be disbarred.

Vice-Chair Baugh did not participate.

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

Disciplinary Review Board
Bonnie C. Frost, Chair

By: _____
Ellen A. Brodsky
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Thomas G. Frey
Docket No. DRB 15-281

Argued: November 19, 2015

Decided: May 3, 2016

Disposition: One-year Suspension

Members	Disbar	One-year Suspension	Reprimand	Dismiss	Disqualified	Did not participate
Frost		X				
Baugh		X				
Clark		X				
Gallipoli		X				
Hoberman		X				
Rivera		X				
Singer		X				
Zmirich						X
Total:		7				1

Ellen A. Brodsky
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Thomas G. Frey
Docket No. DRB 15-396

Argued: March 17, 2016

Decided: May 3, 2016

Disposition: Disbar

Members	Disbar	Suspension	Reprimand	Dismiss	Disqualified	Did not participate
Frost	X					
Baugh						X
Boyer	X					
Clark	X					
Gallipoli	X					
Hoberman	X					
Rivera	X					
Singer	X					
Zmirich	X					
Total:	8					1

Ellen A. Brodsky
Chief Counsel