SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 17-123
District Docket No. XIV-2015-0180E

IN THE MATTER OF	:
RAPHAEL JOSEPH GLINBIZZI	:
AN ATTORNEY AT LAW	:

Decision

Argued: June 15, 2017

Decided: October 4, 2017

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

Marc D. Garfinkle appeared on behalf of respondent.

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

This matter was before us on a recommendation for a censure filed by the District VA Ethics Committee (DEC). Respondent stipulated to having used personal financial information of a former client/family member to open two credit card accounts in respondent's own name, without authority to do so, admittedly in violation of RPC 1.9(c) (using information relating to a former representation to the disadvantage of the former client), RPC 8.4(b) (commission of a criminal act that reflects adversely on

the attorney's honesty, trustworthiness or fitness as a lawyer in other respects); and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation).

We determine to impose a censure.

Respondent was admitted to the bar in 1983. He has no prior discipline in New Jersey.

The facts are contained in an October 24, 2016 stipulation of facts between respondent and the OAE, finalized on the day of the DEC hearing.

Respondent engaged in the private practice of law until late 2001, when he closed his law office. In February 2002, he accepted an attorney position with the New Jersey Office of the Public Defender, Office of Parental Representation, in Newark, New Jersey.

Respondent's father-in-law, Emidio Lonero, had retained respondent to perform unspecified legal work when he was in private practice.

In 2006, respondent found himself in deep financial trouble and used Lonero's personal identifier information, obtained during the former representation, to open two credit card accounts. Specifically, on March 8, 2006, respondent opened a Chase credit card account using his own name and address, but Lonero's social security number. Respondent did so without

Lonero's knowledge or authorization. He used the Chase account until September 2007, when he destroyed the credit card and determined to pay down the balance so that he could close the account.

On October 1, 2006, respondent opened an American Express Blue credit card account, again using his own name and address, but his father-in-law's social security number. He used the American Express account until October 2007, when he destroyed the card and sought to pay off the outstanding balance both on the American Express account and the Chase account, which had accrued combined balances of $30,000. Lonero learned of the accounts' existence when the card issuers contacted him for repayment, after respondent failed to make required payments. Lonero declined to press criminal charges against respondent, but required him to pay off the $30,000 in credit card debt.

On November 11, 2008, respondent sent a memorandum to his in-laws detailing his improprieties and his plan to repay the debt. Respondent explained therein that he had made "payments to two (2) individuals on the last estate that [he] did when [he] left private practice for almost the entire year of 2007 and the first two months of 2008 which took large portions of [his] paycheck away from [his] ability to more successfully reduce these card balances."

On review of respondent's memo, the OAE asked him to explain the seeming admission of knowing misappropriation. Respondent clarified that, when he closed his law practice, he borrowed funds from two non-clients in order to refund retainer fees to clients, and to pay law office expenses. Based on that explanation (and, presumably on its own investigation), the OAE was satisfied that respondent had not engaged in knowing misappropriation.

In late 2008 or early 2009, respondent's parents loaned him $30,000 to pay off the credit card balances, and the accounts were closed.

Other than the stipulation of facts, the OAE moved only one exhibit in evidence – the November 10, 2008 memorandum that respondent had prepared and sent to his in-laws, after his improper actions had come to light. Most of that memorandum dealt with the stressors that led respondent to commit these acts, the deep remorse that he felt for having committed them, his apology to the Loneros for his actions, and his plan to pay off the credit cards.

In mitigation, respondent testified that he committed his criminal acts at a time when he was under extraordinary financial pressure, several years after closing his law office. He could no longer afford to pay the mortgage on the marital

home, his then wife was unsupportive of his decision to move into a less expensive house, and he was criticized for having failed to live up to her family's expectations of him.

Respondent had missed only one credit card payment, which set the collection efforts from Lonero in motion. Respondent expressed his gratitude toward his parents for loaning him the funds to pay off the credit cards and, later, forgiving the balance of that loan.

In her closing argument, the presenter contended that respondent's acts constituted credit card fraud and forgery, and urged the imposition of a short suspension.[1] The stipulation does not identify the specific criminal act that respondent committed.

Respondent's counsel argued against a suspension. He noted that respondent excels in his work as a salaried, senior counsel in the Office of the Public Defender, where he assists parents who are fighting for the custody of their children. Respondent has the "special temperament" required for such a legal position, and is "rendering a great public service to a great many people." Counsel further noted that respondent had been suffering from "deep seated [sic] depression" when he resorted

[1] There is no evidence in the record that respondent forged Lonero's signature when opening the credit card accounts online.

to criminal acts. He now is receiving the "treatment that he needs," as well as the medication that he needs, "when he needs it," and "is of stable mind."

Counsel argued that a suspension would be punitive at this point and, instead, urged the imposition of a censure, conditioned on respondent's remaining a state employee. According to counsel, respondent has displayed

> great personal remorse, a relook at himself. He's also indicated in so many ways that his new life does not reflect what his old one was. He's not in the rat race anymore. He's not in a bad marriage anymore. He's not in a profound depression anymore. And I don't think he's going to put the public at risk. This was family. Granted, the members of the family had been a client of his and it certainly brings that within the purview, as does any criminal act of the OAE, but the need to suspend is not there, even while the need to discipline remains.
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> [T19-11 to 23.][2]

Ralph and Phyllis Glinbizzi, respondent's parents, executed a joint certification in support of respondent, at the request of the hearing panel, in order to provide answers to questions about respondent's repayment of their $30,000 loan. They noted that respondent is still deeply remorseful, as he was in 2008, when he admitted his misconduct to them. The Glinbizzis also

[2] T refers to the transcript of the October 24, 2016 DEC hearing.

considered respondent's behavior "completely out of character" for him, and were shocked and disappointed to learn of it, having raised him "differently than that."

According to the Glinbizzis, respondent did his best to repay the loan, making monthly payments in cash of varying amounts for most of the first year. Because they considered it a family matter, there was no formal loan agreement or repayment terms. Rather, the Glinbizzis were more concerned by respondent's ability to meet his support obligations, eventual college education expenses for his young sons, and his personal expenses at the time. Therefore, after a time, they told him to discontinue making any further payments. Despite that, respondent continued to make payments "as best he could and would make the deposit into our bank account providing the deposit slips to us."

Respondent's parents lamented that respondent had not come to them to borrow the money before resorting to "such a wrongful act," but now understand he was "genuinely depressed and deeply troubled over being able to support his young family at the time. He was in a marriage that was falling apart, had a very high mortgage situation on his home," and had resorted to "prior personal borrowing." They previously had not been aware of respondent's personal borrowing.

The Glinbizzis found comfort in the knowledge that, after admitting his misconduct, respondent took steps to combat his illness through counseling and medication, and modified "all aspects of his life and particularly in taking employment with the Public Defender's office," an opportunity for which "he is very grateful."

The DEC considered other evidence attesting to respondent's good character. Margaret L. Kellogg, Assistant Deputy Public Defender, wrote that respondent had become a close friend over the years since they first met in 2005. Respondent discussed with her his misconduct, noting that he had done much "soul searching and understands why he made the terrible choice he did." She considered respondent to be both an excellent attorney and "a kind, caring, and generous person who would never make the same mistake again. Even knowing about the lapse of moral judgment, I would be his law partner should he leave the Office of Public Defender, a job he is good at and enjoys."

Farida Rajwani, Esq., who has known respondent for four years, also was aware of his "lapse of judgment" and of his deep remorse for his mistakes. Rajwani noted that respondent possesses

> a highly specialized skill set and a strong commitment to the work in order to successfully advocate on behalf of parents in child protective cases. Raphael possess

> [sic] these qualities. He cares for his clients, and routinely shows empathy and concern for them and their children. In addition, he produces good results and outcomes for his clients even under the most strenuous of circumstances. Moreover, Raphael has great knowledge of the child welfare laws, and is a zealous advocate for the marginalized segment of the population that turns to NJ Public Defender's Office for legal representation. That is the Raphael I know and respect, both as a person and an attorney.
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> [Ex.R-3,2.]

The DEC found respondent guilty of the stipulated RPC 1.9(c), finding that respondent used social security information gathered during a prior representation to open credit card accounts, and incurred thousands of dollars in debt, to Lonero's disadvantage. The panel also found respondent guilty of a criminal act, for opening those "fraudulent" accounts, in violation of RPC 8.4(b). Finally, the DEC concluded that the act "is by definition dishonest, fraudulent, deceitful and involved misrepresentation," a violation of RPC 8.4(c).

In mitigation, the DEC considered: (1) respondent's good reputation and character, as attested by two fellow attorneys; (2) his lack of prior discipline; (3) his ready admission of wrongdoing; (4) his contrition and remorse; (5) conditions that show little likelihood of a repeat offense; (6) respondent's cooperation with ethics authorities; (7) the isolated nature of

the incident; (8) the lack of personal gain; (9) his subsequent remedial measures; and (10) certain medical information that the DEC hearing panel accepted "under seal."

In determining the appropriate quantum of discipline for respondent's misconduct, the DEC found guidance from In re Rutledge, 101 N.J. 493 (1986), noting that it involved "financial misconduct unrelated to the practice of law." In that case, the attorney misappropriated funds entrusted to him as the Grand Master of his local Masonic society and used those funds for personal purposes. The attorney claimed that he was entitled to the funds, which were in the form of commissions returned to the Masons by travel agencies with whom they booked tours. However, the two immediately preceding Grand Masters testified that no Grand Master ever had a right to utilize lodge funds for personal purposes, and that Rutledge never asked whether he was entitled to keep the funds.

Rutledge was found guilty of the Disciplinary Rule that preceded the adoption of RPC 8.4(c). The Court adopted our findings in which we noted, in mitigation, the attorney's remorse; numerous character letters from clergy, members of the bar who served on ethics committees, fellow attorneys who dealt with Rutledge for over twenty years, clients, and people in "prominent political positions"; his fine reputation in the

legal community; the passage of time (almost eleven years); and the aberrant nature of the act. In recommending a public reprimand, we noted that a "suspension now would be more vindictive than just." Id. at 499. In the Matter of John R. Rutledge, Jr., DRB 85-187 (December 18, 1985) (slip op.). Rutledge had no prior discipline in twenty-seven years at the bar.

* * *

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

Respondent stipulated that, years after he obtained personal financial identifier information from his father-in-law during a legal representation, he retrieved Lonero's social security number, and used it to obtain two credit cards for respondent's own personal use. Respondent stipulated that, by doing so, he violated RPC 1.9(c), which prohibits a lawyer who has formerly represented a client from using information relating to the representation to the former client's disadvantage.

Thereafter, respondent charged a total of $30,000 to the accounts, and when he failed to satisfy those debts, the card issuers contacted Lonero for payment. Until that time, Lonero

had been unaware of the existence of those accounts, because respondent had the account statements sent to his own address. Respondent stipulated that his actions in the above regard constituted a criminal act, in violation of RPC 8.4(b). As stipulated, those acts also constituted conduct involving dishonesty, fraud, deceit, or misrepresentation, in violation of RPC 8.4(c).

Respondent "stole" Lonero's social security number to take advantage of his good credit, and used it to run up credit card debt. Unfortunately for respondent, he could not keep up with the payments, and "missed one." He ultimately paid off those credit card accounts with a loan from his parents.

An admonition may be imposed for a serious criminal offense, if there are compelling mitigating factors. See, e.g., In the Matter of Shauna Marie Fuqqi, DRB 11-399 (February 17, 2012) (admonition imposed on attorney who, after her then-estranged husband left the marital home for the evening to be with his long-term girlfriend, committed third-degree arson (N.J.S.A. 2C:17-1(b)) and, thus, a violation of RPC 8.4(b), when she gathered his clothes, bible, and a wedding photo, took them outside, piled them in the driveway, and set them ablaze with a lighter; the arson charge was dismissed after the attorney completed a Pre-Trial Intervention Program; in imposing only an

admonition, we took into consideration that the attorney's actions were committed impulsively and within the context of marital difficulties, that she had unsuccessfully attempted to extinguish the fire, that only personal property had been damaged, that she had admitted her wrongdoing, and that she had cooperated with law enforcement authorities) and In re Healy, 202 N.J. 131 (2010) (attorney, who, while under the influence of alcohol, attempted to diffuse an argument between a woman and her drunken boyfriend outside a bar, interfered with the investigation by the police after they had arrived on the scene by interrupting their questioning of the participants and refusing to leave the scene, and then struggled with one of the officers, as he tried to arrest the attorney; attorney convicted of obstruction of justice, N.J.S.A. 2C:29-1, and resisting arrest, N.J.S.A. 2C:29-2(a)(1); "considerable mitigation" taken into account; specifically, attorney attempted to diffuse a volatile situation, which he did not instigate and with which he was not involved; he was motivated by a desire to help others; and he had an unblemished thirty-two-year professional record).

In In re Osei, 185 N.J. 249 (2005), an attorney was censured after causing $72,000 in damage to his own house, which had been the subject of a foreclosure. After destroying entire rooms within the house, Osei was convicted of third-degree

criminal mischief (N.J.S.A. 2C:17-3a (2)). We found that his criminal conduct was deliberate, not impulsive in nature, had occurred over a significant period of time, and was likely committed as revenge for his eviction. In the Matter of George Osei, DRB 05-121 (August 2, 2005) (slip op. at 9).

Here, respondent's misconduct in respect of the use of his father-in-law's social security number resembles those cases involving falsification of public or lending documents, credit card fraud, or identity theft. Respondent falsified his credit application by using his father-in-law's social security number in order to benefit from his good credit, as his own credit, presumably, would not support the approval of credit.

Attorneys who engage in identity theft or fraudulent conduct for personal gain typically receive suspensions of varying terms, depending on the seriousness of the fraud and the presence of aggravating and mitigating factors.

In In re Kopp, 206 N.J. 106 (2007), the Court imposed a three-year retroactive suspension on an attorney who, after being criminally charged, admitted that she used her sister's identity, without her knowledge or consent, to obtain several credit cards in her sister's name, thus defrauding not only her sister, but also the credit card companies. In addition, while she was waiting to be sentenced on those charges, the attorney

was arrested on burglary charges and, ultimately, entered a guilty plea to those charges as well. In determining the appropriate discipline, we considered compelling mitigating factors, including that the attorney was in the throes of a long-standing drug and alcohol addiction at the time of her crimes and that she had made substantial strides in and commitment to recovery. In the Matter of Kimberly Ann Kopp, DRB 10-378 (April 14, 2011) (slip op. at 20).

In In re White, 191 N.J. 553 (2007), the Court imposed a one-year retroactive suspension on an attorney who admitted that she obtained a $54,000 student loan by fraud, having forged her co-worker's name on a student loan application. The attorney, who had been criminally charged, completed a six-month PTI program during which she continued to make payments on the loan. The attorney advanced, and we accepted, numerous mitigating factors, including the passage of time since the infraction, her otherwise unblemished ethics history, her remorse, her cooperation with law enforcement and ethics authorities, and her continuing payment of the loan installments. In the Matter of Angela Y. White, DRB 06-338 (March 19, 2007) (slip op. at 7). See also In re Bevacqua, 185 N.J. 161 (2004) (three-year suspension for attorney who used a stolen credit card to attempt to purchase merchandise at a store under an assumed name; at the

time of his arrest, the attorney also had five more fraudulent credit cards and a wallet with a phony driver's license bearing his picture; the attorney's ethics history included a reprimand and a six-month suspension).

Cases involving falsification of public or lending documents generally have warranted a period of suspension. See, e.g., In re Brandon-Perez, 149 N.J. 25 (1997) (six-month suspension imposed on attorney who obtained a loan under false pretenses; in refinancing her own mortgage, the attorney misrepresented to the lender that she would use the mortgage loan to satisfy four outstanding mortgages; she failed to disclose that, rather than pay off one of the mortgages, she planned to substitute collateral; she then failed to satisfy one of the mortgages for a period of several years and ultimately defaulted on the loan); In re Solvibile, 156 N.J. 321 (1998) (six-month suspension imposed on attorney who, in her application for admission to the Pennsylvania bar, misrepresented that it had been timely mailed and then prepared and submitted a misleading letter to the Pennsylvania Board of Law Examiners, signed by a postal employee, stating that her application and money order payment were timely); and In re Capone, 147 N.J. 590 (1997) (two-year retroactive suspension imposed on attorney who pleaded guilty in federal court to

knowingly making a false statement on a loan application); In re Meaden, 165 N.J. 22 (2000) (three-year suspension for attorney who, while on vacation in California, stole a credit card number while in a camera store and then attempted to commit theft by using the number to purchase $5,800 worth of golf clubs, which he had delivered to a New Jersey address; the attorney also made multiple misrepresentations on firearms purchase identification cards and handgun permit applications by failing to disclose his psychiatric condition and his involuntary psychiatric commitment, as required by law; the attorney had a prior reprimand for making direct, in-person contact with victims of the Edison, New Jersey pipeline explosion mass disaster); and In re Marinangeli 142 N.J. 487 (1995) (three-year suspension for attorney who pleaded guilty to one count of theft of mail, under federal law, after he had used approximately four credit cards and cashed two checks, which he had stolen from mailboxes in the building where his mother resided; the attorney committed the theft to support his drug and alcohol addictions).

We consider respondent's conduct different from the above attorneys in several respects. First, respondent was not criminally charged. Rather, his conduct came to the attention of the disciplinary authorities almost ten years after the fact and only while respondent and his wife were in the process of a

divorce. Before then, it had been considered and treated as a "family matter," with the parties having been satisfied by the payment of the outstanding balances. In addition, respondent did not set out to commit a theft, as did the other attorneys, and, in fact, did not commit a theft. Rather, he had the statements sent to him and continued to make payment on the balances with his own funds, until he finally missed one, bringing his conduct to the attention of his family. Third, unlike the attorneys in the above-cited matters, respondent's conduct did not result in a loss to either respondent's father-in-law or the credit card companies.

We consider other mitigation as well. Specifically, respondent has enjoyed an otherwise unblemished history since his admission to the bar thirty-four years ago. More than eleven years have passed since respondent's misconduct, which was clearly aberrational in nature. Two fellow attorneys vouched for respondent's good character, the deep remorse he still feels for his improprieties, and the fine legal work that he performs in his senior counsel position with the Office of Public Defender, in a difficult, but noble, practice area. Moreover, respondent has cooperated fully with ethics authorities, admitted his misconduct, and entered into a stipulation of facts that saved disciplinary resources.

Respondent's panicked solution to his financial problems was no more egregious than that of the attorney in Osei, above, who received a censure after purposefully destroying the house from which he was evicted in a foreclosure.

For the considerable mitigation presented, we conclude that a censure sufficiently addresses respondent's misconduct. As the DEC noted in its review of Rutledge, supra, 101 N.J., 493, to impose a suspension would be "more vindictive than just."

Member Zmirich voted for a three-month suspension.

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
Bonnie C. Frost, Chair

By: Paula Dow Panuzzo /qcr
Ellen A. Brodsky
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Raphael J. Glinbizzi
Docket No. DRB 17-123

Argued: June 15, 2017

Decided: October 4, 2017

Disposition: Censure

Members	Censure	Three-month Suspension	Did not participate
Frost	X		
Baugh	X		
Boyer	X		
Clark	X		
Gallipoli	X		
Hoberman	X		
Rivera	X		
Singer	X		
Zmirich		X	
Total:	8	1	

By: Paula M. Gramuzzo
Ellen A. Brodsky
Chief Counsel