

B

SUPREME COURT OF NEW JERSEY  
Disciplinary Review Board  
Docket No. DRB 03-148

---

IN THE MATTER OF :  
RUSSELL J. CARBONE :  
AN ATTORNEY AT LAW :

---

Decision

Argued: June 19, 2003

Decided: August 7, 2003

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

Respondent, who is currently incarcerated, did not appear for 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 final discipline filed by the Office of Attorney Ethics ("OAE"), based upon respondent's conviction of conspiracy to obstruct justice and commit perjury, in violation of 18 U.S.C.A. §371, subornation of perjury, in violation of 18 U.S.C.A. §1622, obstruction of justice, in violation of 18 U.S.C.A. §1503, and perjury, in violation of 18 U.S.C.A. §1623.

Respondent was admitted to the New Jersey bar in 1980. On November 16, 1999,

the Court temporarily suspended him, pending the final resolution of this matter. In re Carbone, 162 N.J. 54 (1999).

The following facts are taken from the decision of the United States Court of Appeals for the Eleventh Circuit, which affirmed respondent's conviction:

Following a cruise to St. Martin, Mercedes Quintana and her husband were arrested by customs agents in the Port of Miami for attempting to enter the United States with bundles of heroin attached to their clothing. Quintana agreed to cooperate with law enforcement. She immediately implicated Olga Agudelo, who was to deliver the heroin from Miami to New York. Later, Quintana also implicated her brother-in-law, Adolfo Patino, the alleged drug dealer who arranged for the heroin to be delivered to Quintana in St. Martin.

Based on information provided by Quintana, Agudelo was indicted on federal drug charges in the Southern District of Florida. She retained Appellant Carbone, a criminal defense attorney practicing in New York and Miami. Appellant was given a \$45,000 retainer, with an additional amount to be paid at a future date. Because Agudelo spoke no English and Appellant spoke no Spanish, Mejia acted as a translator. Before trial, Agudelo insisted she was innocent of the charges. Appellant accordingly developed a defense strategy that Agudelo was innocent and that Quintana had motives to implicate her in the heroin importation scheme.

Prior to Agudelo's trial, Libia Porras, Agudelo's half-sister, and Porras' niece, Sarah Veronica Caicedo, arrived in Miami. Porras and Caicedo stayed at the same hotel as Appellant and Mejia. On the Sunday before trial, Appellant and Mejia briefly met with Porras and Caicedo, at which time Porras agreed to testify on Agudelo's behalf; the substance of the proposed testimony was not discussed.

Quintana was the prosecution's principal witness at Agudelo's trial. Consistent with her prior statements to investigators, she testified Agudelo was Patino's principal courier in the United States. On cross-examination, Appellant pursued the defense that Agudelo was innocent and being framed by Quintana.

Appellant and Mejia met with Porras and Caicedo at their hotel to discuss defense strategy. According to the Government's theory of the case, a story was fabricated for Porras' upcoming testimony. Appellant - nervous at this point for having taken a substantial fee from Agudelo, but having failed to fully prepare for the case and mount an adequate defense - created the following story. Porras was to testify that she and Agudelo had been in a motorcycle-parts partnership. Porras and Agudelo later sold the enterprise to Patino for \$10,000 - \$3,000 of which was paid in cash and \$7,000 of which was represented in a promissory note from Patino to Agudelo. When Agudelo pressed Patino for payment on the note, Patino threatened to frame her for a narcotics offense.

According to Porras, she protested the proposed testimony because it was false. Believing in her sister's innocence, however, she reluctantly agreed to give the false testimony and rehearsed it for hours with Appellant. Thereafter, Appellant obtained written statements from Porras and Caicedo attesting that Porras' anticipated testimony was true and was not created by Appellant. Mejia signed a similar statement.

The following day, Porras gave her prepared testimony at Agudelo's trial. During a break, the prosecutor attempted to communicate with Porras to discuss her unexpected testimony. Appellant immediately interceded, however, advising Porras to decline any discussion. Apparently concerned about a formal prosecutorial inquiry regarding Porras' testimony, Appellant and Mejia allegedly advised Porras and Caicedo to leave the country immediately. Eventually, the jury found Agudelo guilty of the charges against her.

Thereafter, Porras re-entered the country and was charged by federal authorities with perjury. She admitted the charges, implicating Appellant and Mejia in the perjury and obstruction of justice scheme. Meanwhile, when the probation officer in Agudelo's case conducted his sentencing investigation, he discovered inconsistencies with Porras' trial testimony. At that time, Agudelo admitted Porras' trial testimony was false. The probation officer relayed this information to the presiding district judge, who scheduled a hearing. Before the hearing, however, Appellant hastily met with Agudelo and allegedly offered to forgive the unpaid balance of his fee and to undertake her appeal *gratis* if Agudelo

recanted her statement to the probation officer. Agudelo eventually agreed and signed a statement prepared by Appellant. At the court hearing, Agudelo recanted her statement to the probation officer and testified as set forth in the statement procured by Appellant. Without making factual findings, the district court removed Appellant from the case and appointed a public defender to further represent Agudelo.

Based on Porras' statements following her indictment, which were corroborated by Caicedo, Appellant was indicted on the current charges of obstructing justice and suborning perjury. Porras and Caicedo testified at Appellant's trial. Neither Appellant nor Mejia took the stand. Appellant's strategy at trial was to argue Agudelo and Porras had concocted the false testimony and duped Appellant into unwittingly eliciting the false testimony.

Respondent was sentenced to 120 months' imprisonment. The United States Supreme Court denied his petition for a writ of certiorari.

The OAE urged us to recommend respondent's disbarment.

\* \* \*

Upon a de novo review of the full record, we determined to grant the OAE's motion for final discipline.

A criminal conviction is conclusive evidence of guilt in a disciplinary proceeding. R. 1:20-13(c)(1); In re Gipson, 103 N.J. 75, 77 (1986). Respondent's conviction established a violation of RPC 8.4(b) (commission of a criminal act that reflects adversely on his honesty, trustworthiness or fitness as a lawyer). The sole issue to be determined is the quantum of discipline to be imposed. R. 1:20-13(c)(2); In re Lunetta, 118 N.J. 443, 445 (1989).

The level of discipline imposed in disciplinary matters involving the commission of a crime depends on numerous 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, supra, 118 N.J. at 445-46.

Respondent fabricated a defense for his client, coached a witness to testify falsely at his client’s trial and elicited the testimony from the witness at the trial. After his client admitted to a probation officer that the witness’s testimony had been untrue, respondent offered her a bribe to recant her admission and to testify falsely to the district court, which she did.

Respondent’s crime “could hardly be a plainer case of dishonesty touching the administration of justice and arising out of the practice of law.” In re Edson, 108 N.J. 464, 473 (1987). In Edson, the attorney advised two clients to manufacture evidence, permitted a client to offer false evidence in a trial, assisted a witness to testify falsely in a trial, participated in a fraud by giving false information to his expert witness for the purpose of having him testify upon the facts, and gave false information to a prosecutor. The Court disbarred him.

Like Edson, respondent has demonstrated that he does not possess the necessary character traits to continue as a member of the New Jersey bar. Like Edson, respondent should be disbarred. We, therefore, recommend his disbarment.

We further determined to require respondent to reimburse the Disciplinary Oversight Committee for administrative costs.

Disciplinary Review Board  
Mary J. Maudsley, Chair

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

---

---

**SUPREME COURT OF NEW JERSEY  
DISCIPLINARY REVIEW BOARD  
VOTING RECORD**

In the Matter of Russell J. Carbone  
Docket No. DRB 03-148

---

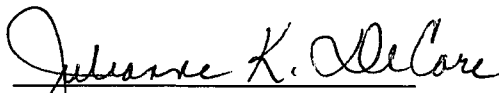
---

Argued: June 19, 2003

Decided: August 7, 2003

Disposition: Disbar

<i>Members</i>	<i>Disbar</i>	<i>Suspension</i>	<i>Reprimand</i>	<i>Admonition</i>	<i>Dismiss</i>	<i>Disqualified</i>	<i>Did not participate</i>
<i>Maudsley</i>	X						
<i>O'Shaughnessy</i>	X						
<i>Boylan</i>	X						
<i>Holmes</i>	X						
<i>Lolla</i>	X						
<i>Pashman</i>	X						
<i>Schwartz</i>	X						
<i>Stanton</i>	X						
<i>Wissinger</i>	X						
<i>Total:</i>	9						

  
Julianne K. DeCore  
Acting Chief Counsel