SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 11-056
District Docket No. XIV-2008-039E

IN THE MATTER OF	
JOSE A. IZQUIERDO, II	
AN ATTORNEY AT LAW	

Decision

Argued: May 19, 2011

Decided: August 2, 2011

Nitza I. Blasini appeared on behalf of the Office of Attorney Ethics.

Eric R. Breslin appeared on behalf of respondent.

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

This matter came before us on a motion for final discipline filed by the Office of Attorney Ethics (OAE), pursuant to R. 1:20-13. The OAE seeks a three-year suspension, retroactive to September 2, 2008, the effective date of respondent's temporary suspension, for his guilty plea to a one-count accusation charging him with knowingly and willfully making materially false, fictitious and fraudulent statements and representations to the Federal Bureau of Investigations

(FBI), in violation of 18 U.S.C. § 1001. Based on respondent's guilty plea, the New Jersey Supreme Court temporarily suspended him, effective September 2, 2008. In re Izquierdo, 198 N.J. 371 (2008).

Respondent agrees with the OAE's recommendation for a retroactive three-year suspension. For the reasons expressed below, we determine that a three-year suspension is warranted in this case.

Respondent was admitted to the New Jersey bar in 2002. He is also admitted to practice law in New York.[1] He maintained a law practice in West New York, New Jersey. Other than the temporary suspension, he has no ethics history in New Jersey.

On August 18, 2008, respondent entered a guilty plea to an accusation, charging him with "knowingly and willfully making false, fictitious and fraudulent statements and representations" to FBI agents, while they were investigating him for, "among other things . . . corruptly giving, offering, and agreeing to give things of value to Hudson County local public officials in exchange for exercising and agreeing to exercise their official influence" in favor of respondent and his clients.

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[1] Respondent's New York license was suspended for two years, effective June 10, 2010.

The factual basis for the plea was elicited during respondent's plea hearing:

From around 2000 to February 2006, respondent was an architect and attorney who represented "agencies" of the town of West New York, as well as builders and developers, in connection with various real estate matters, also in West New York and other Hudson County municipalities. He conducted his business through his architecture and law firms.

On February 22, 2006, FBI agents interviewed respondent about whether he had "illegally given, offered, and agreed to give things of value to local public officials." Respondent concealed providing those benefits and made a number of false and misleading statements to the FBI agents. Specifically, he falsely stated that a "co-scheming individual" (the co-schemer) repaid him approximately $3,417 for his purchase of a Pomeranian dog and pet supplies for the co-schemer's girlfriend.

The co-schemer was a member of the zoning board of adjustment in Union City, New Jersey. As a zoning board official, the co-schemer was responsible for considering various plans for building and development in Union City and for voting to approve or disapprove building and development that met the zoning board's criteria, municipal ordinances,

and state law. The co-schemer held himself out to be a close associate of other supervisory level personnel in Union City government.

During the FBI interview, respondent falsely told the agents that the co-schemer had paid him in full when, in fact, no repayment "was necessary because the purchase was part of a corrupt payment to the co-schemer." The corrupt payment was in exchange for the co-schemer's exercising his official influence and action in Union City in respondent's and his clients' favor.

Respondent also falsely told the agents that he never directly or indirectly provided the co-schemer with any money or anything of value. In reality, respondent had made a number of such payments to the co-schemer, in exchange for official favors and referrals.

Respondent admitted that he "knowingly and willfully [made] these materially false, fictitious, and fraudulent statements and representations to FBI agents." When asked if he knew at all times that what he was doing was against the law, he replied that he did.

Respondent also admitted that he was guilty of the crime alleged in the information and could provide more information about his role and the roles of others in the scheme.

At the March 2, 2010 sentencing, the U.S. Attorney noted that there were two competing interests at play in the case: the serious offense of lying to federal agents, during the course of a corruption investigation, balanced against respondent's extensive cooperation with the government.

Judge Garrett E. Brown, Jr. sentenced respondent to a three-year period of probation. Because respondent's offense was an "economic crime motivated by greed," the judge ordered him to pay a $25,000 fine.

In his submission to us, respondent's counsel highlighted the fact that Judge Brown considered the assistance that respondent had provided to federal authorities. Counsel asked us to give it the same consideration. Counsel attached correspondence from numerous individuals, including respondent's children and ex-wife, attesting to his good character. Counsel also included the U.S. attorney's January 13, 2010 letter to Judge Brown, requesting a downward departure from the applicable sentencing guidelines, submitted under seal, setting forth respondent's subsequent cooperation with the FBI investigation. The U.S. attorney's letter stressed that respondent had provided very substantial assistance to the government in the investigation and prosecution of other individuals. The government, thus, moved

for a downward departure from the applicable sentencing guidelines.

The U.S. attorney enumerated factors that were relevant at sentencing, some of which were: (1) the nature and extent of the defendant's assistance; (2) the significance and usefulness of the defendant's assistance; (3) the truthfulness, completeness, and reliability of the information the defendant provided; (4) the timeliness of the defendant's assistance; and (5) other factors, such as the nature of the offense and the impact on the victims.

The U.S. attorney asked the judge to consider that, although respondent had initially lied to the FBI agents, he shortly, thereafter, had initiated contact with the FBI and admitted his false statements. Since that time, respondent fully and completely cooperated with the government for more than three years. He agreed to plead guilty and to provide very extensive assistance to the government, in its investigation of corruption in Hudson County. He met with FBI agents and attorneys on numerous occasions, agreed to record conversations with many individuals, and, in fact, recorded over 100 conversations, under the supervision of the FBI. He was instrumental in the prosecution of a West New York construction code official, who also pleaded guilty. The

official, in turn, cooperated against several others involved in public corruption. Respondent also assisted in the successful prosecution of a businessman who had bribed public officials.

The U.S. attorney labeled respondent's cooperation as "extraordinarily significant." It permitted the government to make significant inroads into the corruption in Hudson County. Also, his "insight into the inner workings of the mechanisms of public corruption [was] critical to the government's successful investigations."

Based on the above factors, respondent's counsel asked for leniency and the adoption of the OAE's recommendation.

In its brief to us, the OAE stated that respondent's conduct constituted violations of RPC 8.4(b) (criminal act that reflect adversely on the attorney's honesty, trustworthiness or fitness as a lawyer) and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentations). The OAE noted that respondent's false statements to the FBI and his participation in "what was tantamount to bribery, not once, but a number of times," justified a significant term of suspension. The OAE added that, even though respondent was not convicted of bribery, "the underlying facts of his conviction – the admission of making cash payments to a public official in order to secure favorable

results for his clients" -- was relevant in determining the appropriate discipline. The OAE's position was that "[r]espondent's intentional conduct should not be deemed any less devastating to the bar simply because of the federal prosecutor's choice of charges."

The OAE urged us to impose a three-year suspension, retroactive to September 2, 2008, the effective date of respondent's temporary suspension in New Jersey.

Following a full review of the record, we determine to grant the OAE's motion for final discipline. The existence of a criminal conviction is conclusive evidence of respondent's guilt. R. 1:20-13(c); In re Gipson, 103 N.J. 75, 77 (1986).

Respondent's guilty plea to 18 U.S.C. § 1001 constitutes a violation of RPC 8.4(b) and RPC 8.4(c). Only the quantum of discipline to be imposed remains at issue. R. 1:20-13(c)(2); In re Lunetta, 118 N.J. 443, 445 (1989).

The sanction 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 respondent's reputation, his prior trustworthy conduct, and general good conduct." In re Lunetta, supra, 118 N.J. at 445-46.

The discipline imposed in cases involving violations of 18 U.S.C. § 1001 (knowingly and willfully making materially false, fictitious, and fraudulent statements and representations) or lying to investigative authorities, during the course of an investigation, has ranged significantly - from a censure to a lengthy term of suspension.

In In re Myers, 178 N.J. (2003), the Court imposed a censure on an attorney who made misstatements to police officers. During an investigation of a notorious murder case, the attorney denied that she had had a conversation with an individual to whom the murder suspect had confided that he would like to find his wife dead and then had asked that individual if he knew anyone that could help him. In a subsequent police interview, two and a-half years later, the attorney truthfully related her conversation with the individual and subsequently testified truthfully in the murder trial and retrial, relaying her conversation with the individual and admitting that she had earlier lied to the police. The attorney had previously been reprimanded for publishing flyers and making statements in several newspapers that contained inaccurate and misleading statements.

See also In re Devin, 138 N.J. 46 (1994) (three-month suspension for attorney who misrepresented to a police officer

that his client was on vacation in New York, when the attorney knew the client had been incarcerated; the attorney was also guilty of making a series of misrepresentations to his client) and In re Farr, 115 N.J. 231 (1989) (six-month suspension for attorney who, while serving as an assistant prosecutor, lied to the Attorney General's office during the course of an official investigation by denying his use and possession of a controlled dangerous substance; the attorney also committed other serious ethics infractions).

Criminal convictions or other aggravating factors have garnered longer periods of suspension. See, e.g., In re Belardi, 172 N.J. 73 (2002) (eighteen-month suspension for attorney guilty of violating 18 U.S.C.A. § 1001; the attorney made false statements to the Federal Communication Commission by filing forms with it falsely stating that construction had been completed within one year from the date permits had been issued for the construction of a paging transmitter at a particular location).

A more serious scenario netted an attorney a three-year retroactive suspension. In re Roth, 199 N.J. 572 (2009). There, the attorney made false statements to the FBI in connection with its criminal investigation into a company's fraudulent bid proposal to obtain a contract with a hospital.

The contract was obtained by entering into a sham joint venture with a minority-owned business, in order to comply with a county requirement that a minority-owned business receive a portion of the work. The attorney was in-house counsel to the company and had prepared, among other documents, a bid application that contained material omissions and misleading statements.

In imposing the retroactive suspension in Roth, we considered significant mitigating factors, including that the attorney had an unblemished disciplinary record; did not personally benefit, did not initiate or design the fraudulent scheme, but only participated in it after her repeated attempts to avoid doing so were rejected by others at the company; that she experienced personal losses as a result of her participation in the improper conduct, and that she was not actively involved in concealing the fraud.

See also In re Vargas, 170 N.J. 255 (2002) (three-year suspension for attorney guilty of violating 18 U.S.C.A. § 1001 for falsifying and forging documents filed with the Immigration and Naturalization Services (INS) seeking permanent residency status on behalf of clients; the attorney used notices of approval from prior clients, changed the names on the documents, and, thereafter, submitted the false

documents to the INS to illegally obtain residency status for the new clients; he also lied to investigators, claiming that a paralegal had falsified the documents) and In re Kornreich, 149 N.J. 346 (1997) (three-year suspension for attorney who had been involved in an automobile accident and then misrepresented to the police, to her lawyer, and to a municipal court judge that her babysitter had been operating her vehicle; the attorney also presented false evidence in an attempt to falsely accuse the babysitter of her own wrongdoing).

The OAE argued that, even though respondent was not convicted of bribery, the underlying facts of his conviction - admitting making cash payments to public officials to secure favorable results for his clients - is relevant in determining the discipline to impose.

R. 1:20-14(c)(2), governing motions for final discipline, states:

> The sole issue to be determined shall be the extent of final discipline to be imposed. The Board and the Court may consider any relevant evidence in mitigation that is not inconsistent with the essential elements of the criminal matter for which the attorney was convicted or has admitted guilt as determined by the statute defining the criminal matter.

In In re Spina, 121 N.J. 378, 379 (1990), also a motion for final discipline, the Court ruled that the ethics

authorities and the Court may be required to review "any transcripts of a trial or a plea and sentencing proceeding, pre-sentence report, and any other relevant documents in order to obtain the full picture."[2] The Court added that

> it is appropriate to consider "evidence [that] does not dispute the crime but shows mitigating circumstances [relevant to] the issue of whether the nature of the conviction merits discipline and if so, the extent thereof." [Citations omitted]. That principle suggests that it is appropriate as well to examine the totality of circumstances, including the details of the offense, the background of respondent, and the pre-sentence report in reaching an appropriate decision that gives due consideration to the interests of the attorney involved and to the protection of the public.
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> In this case we do no violence to the procedures that govern our disciplinary function nor to notions of due process when we take into consideration respondent's acknowledged misuse of funds. . . . Respondent's acknowledgement of his conversions of many other checks and cash beyond the . . . $15,000 check was part of

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[2] Spina involved a non-practicing attorney who, while working for the International Law Institute (ILI) in several different capacities, began commingling his funds and the ILI's funds, and using the ILI's funds for his own use. His personal use of the funds was flagrant and continued even after the ILI began an investigation. Spina pleaded guilty to the misdemeanor of taking $15,000, "without right." During his plea, Spina admitted taking or converting an additional $32,000 for his own purposes. In recommending his disbarment, which the Court upheld, we considered documentation "beyond the four corners" of Spina's guilty plea.

> his plea agreement, and the various documents that put flesh on the bare bones of respondent's conversions were all made part of the sentencing court's record and were referred to in these disciplinary proceedings.
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> [Id. at 389-390.]

In In re Nedick, 122 N.J. 96, 103 (1991), the Court, in adopting our decision in its entirety and incorporating it into its order as an appendix, confirmed the propriety of considering more than a guilty plea in a motion for final discipline. As we noted in our decision,

> [t]he Board is also aware that its review is not limited to the four corners of the plea of guilty in recommending the appropriate discipline to be imposed. All relevant documents that will assist in creating the "full picture" are considered. These include the pre-sentence report, the plea agreement, and the sentencing court's record.

Thus, under Spina and Nedick, we find that it is appropriate to consider not only respondent's guilty plea to violating 18 U.S.C. § 1001, but also the underlying elements of bribery that were established during his plea.

Bribing a public official generally results in disbarment (See, e.g., In re Meiterman, 202 N.J. 31 (2010) (bribery of public official, the executive director of a utility authority, and coaching of an individual to lie to law enforcement officials); In re Jones, 131 N.J. 505 (1993)

(scheme to bribe a public official, the attorney himself, who at the time was a deputy attorney general); In re Rigolosi, 107 N.J. 192 (1987) (attempt to bribe a police officer to drop charges against a criminal defendant with ties to organized crime); In re Conway, 107 N.J. 168 (1987) (conspiracy to commit bribery, companion case to Rigolosi); In re Tuso, 104 N.J. 59 (1986) (attempt to bribe a school board member to obtain a building contract for a client); In re Hughes, 90 N.J. 32, 37 (1982) (bribery of an IRS agent to remain silent about his altering and forgery of federal tax lien releases); and In re Sabatino, 65 N.J. 548 (1974) (conspiracy to commit bribery of Jackson Township public officials).

In a few bribery cases, where compelling mitigating circumstances were present, sanctions short of disbarment (three-year suspensions) were imposed. See, e.g., In re Panarella, 177 N.J. 565 (2003) (attorney not charged with bribery but with being an accessory after the fact in a wire fraud scheme to deprive the public of honest services of an elected official; the attorney paid a state senator more than $300,000 to conceal their relationship; the senator took legislative action favorable to the attorney; mitigation included the attorney's long history of service to his country and his previously unblemished record); In re Caruso, 172 N.J. 350 (2002) (attorney's role in the

conspiracy to commit bribery was relatively minor; he acted as the intermediary for the mayor who instigated the bribery; the attorney gave substantial assistance to the U.S. Attorney's Office and expressed remorse and regret for his action); and In re Mirabelli, 79 N.J. 597 (1979) (attorney never intended to pay the bribe; concerned that his client would not pay his fee, he misrepresented that a $2,500 payment had to made to the assistant prosecutor to obtain a non-custodial sentence).

Of the cases cited above, we find that In re Roth, supra, 199 N.J. 572 (three-year retroactive suspension) is most analogous. Roth, like respondent, was found guilty of making false statements to the FBI during its investigation into the submission of a fraudulent bid proposal for a contract. Roth's underlying conduct, drafting and submitting fraudulent documents, rendered her guilty also of wire and mail fraud. Like respondent, Roth's mitigation was significant: she did not personally benefit from the fraud and did not mastermind it, participating in it after her repeated attempts to avoid doing so were rejected by others; she did not actively conceal the fraud; and she had a stainless disciplinary record.

Respondent, too, entered a guilty plea to making false statements to the FBI. What makes this case as serious as Roth's is that the accusation cited, and respondent admitted

that, on a number of occasions, he had "made a number of [improper] payments to Co-schemer in exchange for official favors and referrals," in essence, bribery. On the other hand, respondent's mitigating factors are of equal force to those in the Roth case. They are: his quick admission of guilt; the letters attesting to his good character; the very substantial assistance that he provided to the government in its investigation and prosecution of other individuals involved in corruption in Hudson County; and his otherwise unblemished record.[3]

Based on the totality of circumstances present here: respondent's conviction of a crime, the mitigating factors, the above-cited precedent, the OAE's recommended discipline, and respondent's agreement with that level of discipline, we determine that the imposition of a three-year suspension, retroactive to September 2, 2008, the effective date of his temporary suspension, is appropriate discipline in this case.

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

[3] In fact, the mitigation considered in Panarella, Caruso, and Mirabelli (three-year suspension cases) might not have been as compelling as respondent's.

and actual expenses incurred in the prosecution of this matter, as provided in R. 1:20-17.

Disciplinary Review Board
Louis Pashman, Chair

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

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Jose A. Izquierdo, II
Docket No. DRB 11-056

Argued: May 19, 2011

Decided: August 2, 2011

Disposition: Three-year suspension

Members	Disbar	Three-year Suspension	Reprimand	Dismiss	Disqualified	Did not participate
Pashman		X				
Frost		X				
Baugh		X				
Clark		X				
Doremus		X				
Stanton		X				
Wissinger		X				
Yamner		X				
Zmirich		X				
Total:		9				

Julianne K. DeCore
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Chief Counsel