SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 13-051
District Docket No. VIII-2011-1117E

IN THE MATTER OF	
W. R. VEITCH	
AN ATTORNEY AT LAW	

Decision

Argued: July 18, 2013

Decided: August 14, 2013

Richard Galex appeared on behalf of the District VIII Ethics Committee.

Robert H. Corbin appeared on behalf of respondent.

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

On January 17, 2013, this matter was before us on a recommendation for an admonition filed by the District VIII Ethics Committee (DEC), based on respondent's violation of RPC

4.2 (in representing a client, a lawyer shall not communicate about the subject of the representation with a person the lawyer knows or by the exercise of reasonable diligence should know to be represented by another lawyer in the matter, absent the other lawyer's consent, authorization by law, or court order). We decided to treat the recommendation for an admonition as a recommendation for greater discipline, pursuant to R. 1:20-15(f)(4). We determine to censure respondent for his misconduct.

Respondent was admitted to the New Jersey bar in 1971. At the relevant times, he maintained an office for the practice of law in New Brunswick. Respondent has no disciplinary history.

In June 2009, Chrispin Grant, Daniel K. Jackson, and Sulaiman Massaquoi were indicted in Middlesex County for several crimes, including first-degree armed robbery, first-degree kidnapping, and second-degree aggravated assault. The indictment arose out of the group's conspiracy to lure a Chinese food delivery person, Gang Dong Huang, to Massaquoi's North Brunswick apartment, where, according to Jackson's testimony at his January 28, 2011 plea, they carried out their plan of stealing the food and Huang's wallet, holding him against his will, and beating him. Attorney Richard P. Klein represented

Jackson in the criminal matter. Respondent represented Massaquoi.

Jackson's January 28, 2011 plea was not his first attempt at doing so. On January 25, 2011, just before jury selection was to begin, Jackson had appeared before the trial judge for the purpose of pleading guilty to second-degree conspiracy, which had a maximum penalty of ten years, rather than the twenty-year maximum that he faced for the first-degree armed robbery charge. Jackson acknowledged that, by pleading guilty, he was giving up his right to remain silent, as he would have to testify about what had happened.

During Klein's questioning of Jackson, as part of putting the facts on the record, Jackson denied that all three defendants had hit Huang. Apparently, this statement was contrary to what Jackson had earlier stated had taken place. After a brief conversation between Jackson and Klein, Klein stated on the record that Jackson did not want "to give truthful testimony against the codefendant." Thus, no guilty plea was entered on behalf of Jackson.

On January 28, 2011, Jackson appeared before the court again, while jury selection was underway. This time, he testified that it was his idea to rob a deliveryman and that

Grant and Massaquoi went along with it. Jackson and Grant waited for the deliveryman in an apartment, with Massquoi as the lookout. After Huang arrived and entered the apartment, Jackson and Grant began hitting him, with Jackson pistol-whipping Huang with his handgun. Massaquoi entered the apartment to prevent Huang from escaping.

At the disciplinary hearing in this matter, respondent took the position that, once Jackson had entered his plea, he "was beyond a client." Not only was he a witness for the State, he had become an agent for the State, because he had been calling Massaquoi and, during those conversations, they had exchanged incriminating information. Indeed, some of the recordings of those conversations were used against Massaquoi at the trial.

Klein conceded that, when Jackson entered his plea, on January 28, 2011, he became a co-defendant witness for the State, albeit a witness represented by counsel, who would now testify against Massaquoi.

Klein testified that, on February 4, 2011, the prosecutor notified him of respondent's intention to interview Jackson.[1] According to respondent, he had tried to get Klein to go with him to meet Jackson, but Klein had refused. Thus, respondent believed "there was something going on between the [S]tate and Mr. Klein just to basically take away the fairness and impartiality of [Massaquoi]'s case." Consequently, it was part of his obligation, in zealously representing Massaquoi, to know, in advance, what Jackson would say on the witness stand "and time was of the essence."

After Klein learned that respondent intended to interview Jackson, he called respondent's office, on February 4, 2011, and left a message with respondent's secretary, stating that respondent did not have Klein's permission to talk to Jackson.

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[1] Notwithstanding Jackson's guilty plea, Klein intended to remain his attorney until sentencing. As of the date of the disciplinary hearing, April 24, 2012, Jackson had not been sentenced because he had attempted to withdraw his plea, at which time a different attorney was assigned to represent him. Jackson's attempted withdraw of his plea occurred after respondent had met with him, on February 6, 2011.

Klein also called respondent's cell phone, emailed him, and faxed him a letter on that date, which stated in pertinent part:

> It has come to my attention that you plan on visiting my client at the MCACC to speak [sic] Mr. Jackson about the case and/or his plea and/or his testimony. **So it is clear and non ambiguous, you <u>do not</u> have my authorization to do that. Mr. Jackson is represented by counsel and in an ongoing criminal matter and it is unethical for you to speak with him without my consent or me being [sic].** I have left a message with the same information on your cell phone, with your secretary and by e-mail.
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> [Ex.K1.][2]

Klein testified that respondent did not reply to any of his attempts to communicate with him. Nevertheless, respondent testified that he knew that Klein did not want him to talk to Jackson. Respondent was certain that he had received Klein's February 4, 2011 letter, though not exactly when. Moreover, he could not say that he did not receive the February 4, 2011 email, though he stated that, as a rule, he does not read his email every day. He conceded, however, that he was "definitely

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[2] "Ex.K1" refers to the February 4, 2011 letter from Klein to respondent.

aware" that Klein did not want him to talk to Jackson. Nevertheless, he met with Jackson at the prison on Super Bowl Sunday, February 6, 2011.

Klein testified that he and the prosecutor also met with Jackson, on February 6, 2011, to prepare him for his trial testimony that week. Their meeting took place before respondent's meeting with Jackson. According to Klein, Jackson was "gung ho" to testify and even provided the prosecutor with additional information about Massaquoi's involvement in the crime, which "none of us knew before."

Respondent testified that, when he went to the prison to meet with Jackson, on February 6, 2011, he was placed in a pod-like room. When Jackson entered the room, respondent gave him a waiver to read and sign. The waiver stated:

> I, Daniel K. Jackson, acknowledge this 6th day of February, 2011, that I have the absolute right to refuse to speak with W. Richard Veitch, Esq., who I know represents Sulaiman Massaquoi, in the matter of State v. Gran, Jackson & Massaquoi. I further acknowledge that I know that I am listed as a witness for the State of New Jersey, and as such will be subject to cross-examination by Attorney Veitch. Nonetheless I wish to

> speak with him, and further acknowledge being given a copy of my two Plea Appearances by Mr. Veitch.
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> [Ex.R3.][3]

According to respondent, Jackson read the waiver and signed it. At that point, respondent told Jackson that he was confused, because he did not know whether Jackson would testify to the facts of the aborted plea, the second plea, or whether there was "a third version out there" that respondent had not yet heard. Respondent continued:

> Now, at that point in time, Mr. Jackson looked at me like I had just grown five heads. It was over at that point. I said okay. That's good enough. Enjoy [sic] Super Bowl, I'm leaving.
>
> I could not have been in that pod for more than ten minutes. And if we had the sign-in sheet there, we'd know that I was in that pod for under ten minutes. He never said anything to me other than hello.
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> [T64-24 to T65-7.][4]

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[3] "Ex.R3" refers to the waiver signed by Jackson on February 6, 2011.

[4] "T" refers to the transcript of the DEC hearing.

According to respondent, in fact, he had no communication or conversation with Jackson on February 6, 2011 -- or thereafter.

In the end, respondent conceded that he had the right to call Jackson as his own witness at the trial. He chose not to "because it was like watching a loaded cannon roll around on a deck."

Klein reiterated that respondent "[n]ever, ever, ever" tried to get in touch with him, before visiting Jackson in prison. Klein learned, a few days after the fact, that, despite his objection, respondent had visited Jackson anyway, on Super Bowl Sunday. Based on a conversation that Klein had with Jackson, he learned that Jackson "didn't give additional information" to respondent about the case. Jackson did say, however, that he had received from respondent "more information about the testimony" than from Massaquoi, with whom he had had telephone conversations.

Klein, the prosecutor, and respondent went before the trial judge, at which time Klein placed his "displeasure on the record." Respondent then produced the waiver that Jackson had signed. When Klein continued to object to what respondent had done, respondent replied, "Do what you got to do."

After the judge had heard the attorneys' versions of the events, he stated that, although respondent had violated the RPCs, the issue was whether he had obtained discoverable information from Jackson. At the judge's direction, Klein then reviewed respondent's notes from the meeting, which consisted of "illegible scribbles," and he also talked to Jackson. Afterward, Klein reported to the judge that "no additional information [was] given to Mr. Veitch," presumably by Jackson. Nevertheless, according to Klein, Veitch had provided Jackson with information about the witnesses and, as a result, Jackson now knew that there were "serious weaknesses" in the State's case, including Huang's inability to identify him. Therefore, Jackson had decided to withdraw his plea.

Jackson's motion to withdraw the guilty plea was denied. Moreover, because he had reneged on the plea agreement that he had reached with the prosecutor, the State sought to pursue a higher sentence on the theory that, having attempted to withdraw the plea, Jackson should not benefit from its terms. The record does not reveal what transpired thereafter.

The DEC found that "respondent contacted Jackson without the consent of his attorney and outside of the presence of his attorney," which constituted "a technical but deliberate

violation of Rule 4.2 without apparent harm." Because of respondent's unblemished disciplinary record, the DEC recommended the imposition of an admonition.

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.

RPC 4.2 provides, in pertinent part:

> In representing a client, a lawyer shall not communicate about the subject of the representation with a person the lawyer knows, or by the exercise of reasonable diligence should know, to be represented by another lawyer in the matter . . . unless the lawyer has the consent of the other lawyer or is authorized by law or a court order to do so, or unless the sole purpose of the communication is to ascertain whether the person is in fact represented.

Respondent did communicate with Jackson about the criminal matter, not only without Klein's consent, but also over his strong objections.

Klein testified that, notwithstanding Jackson's guilty plea, he continued to represent Jackson and had intended to do so, up through sentencing. Moreover, Klein and respondent agreed that, on February 4, 2011, Klein had expressly objected to respondent's communicating with Jackson and that respondent went ahead and met with Jackson anyway, on February 6, 2011.

Further, Klein testified that, at his meeting with Jackson, Jackson was eager to testify, even to the point of providing Klein and the prosecutor with additional information about Massaquoi's role in the crime.

For his part, respondent testified that, although he did not have Klein's consent to communicate with Jackson, he went ahead and did so anyway because Jackson had become a witness and agent for the State, after he had plead guilty, and because, as a zealous advocate for Massaquoi, respondent believed that it was crucial for him to talk to Jackson. His own testimony shows that his claim that they did not discuss anything about the case was not true. Respondent testified that he did talk to Jackson about the guilty pleas and asked whether his story would change again, when he took the stand.

According to Klein, although respondent did not obtain any information from Jackson at their meeting, Jackson had obtained information from respondent, namely, that Huang would not be able to identify Jackson in court. The reason for Jackson's subsequent attempt to withdraw his plea then becomes clear.

Regardless of respondent's failure to obtain information from Jackson during their meeting, it is obvious that he

communicated with Jackson about the criminal matter and imparted information to him. Therefore, respondent violated RPC 4.2.

The DEC determined that, even though respondent had violated the RPC, there was no harm. Harm is not an element of RPC 4.2. Nevertheless, if harm can be shown, it may be considered an aggravating factor.

Here, the State would certainly have been harmed by the loss of a witness, who would have provided testimony in its favor in the trial against Massaquoi. However, even though Jackson's motion to withdraw the plea was denied, the record does not indicate whether Jackson ultimately testified against Massaquoi.

Moreover, Jackson's action would have potentially harmed him, as the State was pursuing a sentence for up to forty years, arguing that Jackson should not get the benefit of the plea agreement, after attempting to renege on it. Yet, the record does not show how that issue was resolved. Thus, there is no clear and convincing evidence in this record of harm to either the State or to Jackson.

There remains for determination the appropriate quantum of discipline to be imposed for respondent's violation of RPC 4.2.

In 1995, the Supreme Court declared that a suspension will

"ordinarily" be imposed in a case such as this, that is, where an attorney for one co-defendant communicates with co-defendants, who are represented by counsel and who have entered into plea agreements calling for them to testify against the attorney's client. In re Alcantara, 144 N.J. 257, 268 (1995). Since Alcantara, suspensions have been imposed on attorneys who have violated RPC 4.2.

In cases involving long-term suspensions, the attorneys had committed multiple acts of misconduct in several matters. See, e.g., In re Brett, 293 N.J. 296 (2007) (on motion for reciprocal discipline, one-year suspension imposed on attorney who communicated with an opposing party without first obtaining consent from the party's counsel, pursued a frivolous appeal, and led a former client and his attorney-in-fact to believe that he was an attorney in good standing when, in fact, he was under a temporary suspension, violations of RPC 4.2, RPC 3.1, and RPC 5.5(a), respectively; the attorney also failed to appear at his client's arraignment, failed to have his client transported to the court, and failed to notify him of the arraignment date, violations of RPC 1.1(a), RPC 1.3, and RPC 1.4(b); the attorney misrepresented to the Maine Board of Board of Bar Overseers that the court had not given him notice of the arraignment, violations of RPC 8.4(c) and

RPC 8.1(a); the attorney also violated RPC 8.4(c) and RPC 8.4(d) when he assisted his client in obtaining access to the victim and requested and accepted money from a client whom he was appointed to represent; aggravating factors included three prior reprimands and his failure to inform the OAE of the disciplinary actions taken against him in Maine and Massachusetts; attention deficit/hyperactivity disorder was the sole mitigating factor); In re Lowell, 178 N.J. 111 (2003) (three-year suspension imposed on attorney who violated RPC 1.2(d), RPC 1.3, RPC 1.16(d), RPC 3.3(a)(1) and (4), RPC 3.4(c), RPC 4.1(a)(1), RPC 7.1(a)(1), RPC 8.4(a), RPC 8.4(c) and RPC 8.4(d), as well as In re Opinion No. 665 of the Supreme Court Advisory Committee on Professional Ethics, 131 N.J.L.J. 1074 (1992); substantial mitigation); and In re Bowman, 178 N.J. 25 (2003) (in a default matter, one-year suspension imposed on attorney who abandoned the client in four matters; attorney also had improper communications with a member of a litigation control group, violation of RPC 4.2).

In one case, In re Milita, 180 N.J. 116 (2003), the attorney received a three-month suspension for admittedly contacting his client's co-defendant, whom he knew to be represented by counsel. The attorney claimed that, because counsel for the co-defendant had previously given him permission

to speak with his client, he believed that he had a continuing right to do so. The attorney violated RPC 4.2 and RPC 8.4(d). His disciplinary record included a six-month suspension for similar misconduct and a reprimand.

In another case, In re Tyler, 204 N.J. 629 (2011), a reprimand was imposed on an attorney who violated RPC 4.2. In Tyler, a motion for discipline by consent, the attorney communicated directly with a client about a disgorgement order, although he knew or should have known that subsequent counsel had already been engaged, a violation of RPC 4.2. He also exhibited gross neglect, a pattern of neglect, lack of diligence, and failure to communicate with the clients, in six bankruptcy cases. Mitigating factors included the attorney's unblemished disciplinary history and her physical and mental health issues, at the time of the misconduct.

Here, we believe that a censure is appropriate for respondent's misconduct. Although, under Alcantara, a suspension would "ordinarily" be in order, Alcantara was decided prior to the Court's adoption of censure as a form of discipline, in 2002. We are mindful that respondent did not simply contact a witness that he knew to be represented by counsel. He contacted Jackson over the express, written

objection of Jackson's lawyer. Juxtaposed against this very serious aggravating factor, however, is respondent's unblemished disciplinary history of thirty-eight years, at the time of the infraction. This mitigating factor militates against a term of suspension. We are persuaded that a censure sufficiently addresses respondent's improper conduct, particularly because, as the DEC noted, there was no actual harm to any party or to the judicial system.

Member Gallipoli voted to impose a three-month suspension. Member Clark recused himself.

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: _____
Julianne K. DeCore
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of W.R. Veitch
Docket No. DRB 13-051

Argued: July 18, 2013

Decided: August 14, 2013

Disposition: Censure

Members	Disbar	Three-month Suspension	Censure	Dismiss	Disqualified	Did not participate
Frost			X			
Baugh			X			
Clark					X	
Doremus			X			
Gallipoli		X				
Yamner			X			
Zmirich			X			
Total:		1	5		1	

Julianne K. DeCore
By Chief Counsel