SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 06-320
District Docket NO. XIV-04-349E

IN THE MATTER OF	
LOUIS A. CAPAZZI, JR.	
AN ATTORNEY AT LAW	

Decision

Argued: January 18, 2007

Decided: March 30, 2007

Christina Blunda Kennedy appeared on behalf of the Office of Attorney Ethics.

Raymond Flood 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 disciplinary stipulation filed by the Office of Attorney Ethics ("OAE"). It arose out of respondent's conduct in connection with his wholly-owned bail bond company. Respondent stipulated that he committed a criminal act (altering evidence) that constituted dishonest conduct and conduct prejudicial to the administration of justice. The OAE recommended a reprimand to a three-month suspension. We determine to impose a one-year suspension.

Respondent was admitted to the New Jersey bar in 1990. He has no prior discipline.

On November 8, 2006, respondent and the OAE entered into a disciplinary stipulation, in which he admitted violations of RPC 8.4(b) (commission of a crime that reflects adversely on a lawyer's honesty, trustworthiness, and fitness as a lawyer), RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation), and RPC 8.4(d) (conduct prejudicial to the administration of justice).

The facts are as follows:

At the time of the misconduct, respondent owned and operated Atlantic Bail Bondsmen ("Atlantic"), located in respondent's law office, in Oradell. On July 8, 2004, respondent was arrested and charged with theft by deception and altering evidence. Specifically, respondent coerced a bounty-hunter, John Gomm, to fabricate an inflated receipt for expenses incurred in the apprehension of Christine Myers, an Atlantic client who had "jumped" bail. By his actions, respondent sought to defraud Myers out of additional, unwarranted expenses that she would be required to pay to Atlantic.

For reasons that are not clear from the record, respondent believed at the time that his and Atlantic's

activities were under investigation by the Bergen County Prosecutor's Office. Also unclear is why respondent thought that inflating the bill for expenses in the Myers matter would divert the attention of law enforcement authorities away from him, rather than draw attention to his actions. Nevertheless, to that end, in three separate telephone conversations with Gomm on July 2, 2004, respondent requested him to improperly "pad" the Myers bill. He gave Gomm exact instructions on how it should be done. He also asked Gomm to "cover his back," if anyone questioned him about the bill, assuring Gomm that he, respondent, would cover Gomm's back in return. These three conversations, which were recorded by the Bergen County Prosecutor's Office, formed the basis for respondent's arrest and ultimate admission of guilt.

On October 12, 2005, respondent was charged with a single crime, altering evidence, in violation of N.J.S.A. 2C:5-1 and N.J.S.A. 2C:28-6. Because respondent had not presented the phony receipt for payment, a theft by deception charge contemplated at the time of his arrest (N.J.S.A. 2C:20-4) was not pursued.

In lieu of a trial, in December 2005, respondent was admitted into a one-year long pretrial intervention program. In addition, he self-reported his conduct to ethics

authorities on August 16, 2004, just after his arrest, and was mid-way through the program when the OAE interviewed him, in June 2006.

In recommending a reprimand to a three-month suspension for respondent's criminal behavior, the OAE summarily cited four cases, without analyzing them and comparing them to the present matter: In re Poreda, 139 N.J. 435 (1995); In re Lewis, 138 N.J. 33 (1994); In re Mark, 132 N.J. 268 (1993); and In re Kernan, 118 N.J. 361 (1990).

After an independent review of the record, we are satisfied that the stipulation contains clear and convincing evidence of unethical conduct on respondent's part.

Respondent stipulated that he coerced Gomm to inflate an Atlantic receipt for services in the Myer matter. He criminally altered evidence, thereby violating N.J.S.A. 2C:5-1 and N.J.S.A. 2C:28-6, a third-degree crime. Respondent's intent was to mislead the prosecutor's office in the course of an investigation involving his and Atlantic's activities. Respondent stipulated that his actions also violated RPC 8.4(b), RPC 8.4(c), and RPC 8.4(d).

The only remaining issue is the appropriate quantum of discipline. Although research uncovered no cases exactly on point, respondent's conduct may be compared to that of

attorneys who presented false evidence to disciplinary authorities, in the course of their investigation of the attorneys' conduct, or to a court. See, e.g., In re Lewis, 138 N.J. 33 (1994) (admonition for attempting to deceive a court by introducing into evidence a document falsely showing that a heating problem in an apartment of which the attorney was the owner/landlord had been corrected prior to the issuance of a summons); In re Sunberg, 156 N.J. 396 (1998) (reprimand for attorney who created a phony arbitration award to mislead his partner and then lied to the OAE about the arbitration award; mitigating factors included the passage of ten years since the occurrence, the attorney's unblemished disciplinary record, his numerous professional achievements, and his pro bono contributions); In re Bar-Nadav, 174 N.J. 537 (2002) (three-month suspension for attorney who submitted two fictitious letters to the district ethics committee in an attempt to justify his failure to file a divorce complaint on behalf of a client; the attorney also filed a motion on behalf of another client after his representation had ended, and failed to communicate with both clients); In re Rinaldi, 149 N.J. 22 (1997) (three-month suspension for attorney who did not diligently pursue a matter, made misrepresentations to the client about the status of the matter, and submitted three

fictitious letters to the ethics committee in an attempt to show that he had worked on the matter); In re Poreda, 139 N.J. 435 (1995) (three-month suspension for attorney who presented a forged insurance identification card to a police officer and also to a court); In re Telson, 138 N.J. 47 (1994) (six-month suspension for attorney who "whited-out" a section of a court document to conceal the fact that the court had dismissed his client's divorce complaint for failure to state a cause of action; thereafter, the attorney submitted the uncontested divorce matter to another judge, who granted the divorce; several weeks later, the attorney denied to a third judge that he had altered the document); In re Silberberg, 144 N.J. 215 (1996) (two-year suspension imposed on an attorney who, in a real estate closing, allowed the buyer to sign the name of the co-borrower; the attorney then witnessed and notarized the "signature" of the co-borrower; the attorney stipulated that he knew at the time that the co-borrower was deceased; after the filing of the ethics grievance against him, the attorney falsely stated that the co-borrower had attended the closing; on another occasion, the attorney sent a false seven-page certification to the district ethics committee in order to cover up his improprieties); In re Penn, 172 N.J. 38 (2002) (three-year suspension imposed on an attorney who failed to

file an answer in a foreclosure action, thereby causing the entry of default against the client; thereafter, in order to placate the client, the attorney lied that the case had been successfully concluded, fabricated a court order, and signed the name of a judge; the attorney then lied to his adversary and to ethics officials; the attorney also practiced law while ineligible).

In a more recent case, in In re Katsios, 185 N.J. 424 (2006), we voted for a six-month suspension, but the Court imposed a two-year suspension. In Katsios, the attorney prematurely released a buyer's deposit (about $20,000) held in escrow by the attorney for a real estate transaction, to the buyer/client, his cousin, without the consent of all the parties to the transaction. Ordinarily, that misconduct would have warranted no more than a reprimand. Katsios panicked, however, when contacted by investigators (the OAE), and then sought to cover up his misdeed. In fact, both the Katsios special master and this Board noted that the cover-up had been worse than the "crime."

Here, this respondent sought to mislead a prosecutor's office, a law enforcement authority with the power to charge him with additional, more serious, crimes, such as subornation of perjury or obstruction of justice, stemming from his pact

with Gomm to lie to the investigators in order to conceal his wrongdoing.

By letter dated January 12, 2007, we requested that the parties address three issues: 1) whether respondent and his counsel were aware that, in reviewing the record de novo, we and the Supreme Court may impose substantially different discipline from that recommended in the disciplinary stipulation; 2) why the stipulation is silent about conduct on respondent's part that seemingly amounted to obstruction of justice — conduct described in the Bergen County Prosecutor's memorandum, incorporated by reference into the stipulation, as: "Louis Capazzi asked [bounty-hunter Gomm] that if anyone speaks to you [Gomm] about this that he [Gomm] should cover his back and he would cover John Gomm's back;" and 3) whether this matter is different from In re Katsios, supra, 185 N.J. 424, which resulted in a two-year suspension.

With regard to the first issue, respondent's counsel acknowledged that he and his client were aware "that the Supreme Court ultimately decides what the actual discipline will be."

The OAE clarified its position on the second issue (obstruction of justice) as follows:

> With regard to your inquiry as to why the Stipulation is silent as to respondent's

> apparent commission of conduct constituting an obstruction of justice, please note that respondent stipulated to a violation of RPC 8.4(d), conduct prejudicial to the administration of justice. We believe that the stipulation and the violation of that Rule of Professional Conduct address your concern.
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> [OAE letter-brief, dated January 17, 2006 at 2-3.]

Respondent's counsel did not address the obstruction of justice issue in his brief.

Regarding the third issue, both parties distinguished this case from Katsios. Respondent's counsel argued that, here, unlike in Katsios, respondent did not engage in an actual cover-up by altering documents; in other words, this respondent never presented the falsified bill for payment or to authorities. Similarly, the OAE noted that Katsios engaged in a calculated plan of repeated misrepresentations in order to cover up his misconduct, whereas this respondent engaged in a single act of falsification; moreover, he did not follow it with a cover-up, choosing instead not to present the bill for payment.

Most significant was the OAE's acknowledgment that obstruction of justice is implicit in respondent's stipulation to a violation of RPC 8.4(d). That statement clarified for us the basis for the parties' stipulation to an RPC 8.4(d)

violation, that is, that respondent's request of Gomm to enter into a pact to lie (and thereby obstruct justice) constituted conduct prejudicial to the administration of justice.

Although the parties drew apt distinctions between this case and Katsios, these distinctions temper Katsios, but do not render it irrelevant or inapplicable. The distinction between the two cases is the difference between an attempt and the actual commission of the offense. Katsios completed the crime: he improperly released the funds, lied about it to the OAE, and then took affirmative steps to cover up the lie. This respondent asked Gomm to pad his bill, received the falsified invoice from Gomm, solicited his cooperation in deceiving the prosecutor's office by asking him to engage in mutual lies, but never executed the plan to deceive.

We are mindful that, unlike Katsios, respondent involved a third party in his scheme. Nevertheless, the crucial fact that, unlike Katsios, respondent did not actually lie to investigative authorities militates against the imposition of the two-year suspension meted out in Katsios. In our view, a one-year suspension is the appropriate form of discipline for respondent's wrongdoing.

Chair O'Shaughnessy and Member Boylan voted for a three-month suspension. Members Lolla and 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 this matter, as provided in R. 1:20-17.

Disciplinary Review Board
William J. O'Shaughnessy
Chair

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

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Louis A. Capazzi, Jr.
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Disposition: One-year suspension

Members	Disbar	One-year Suspension	Three-month suspension	Dismiss	Disqualified	Did not participate
O'Shaughnessy			X			
Pashman		X				
Baugh						X
Boylan			X			
Frost		X				
Lolla						X
Neuwirth		X				
Stanton		X				
Wissinger		X				
Total:		6	2			2

Julianne K. DeCore
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Chief Counsel