SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket Nos. DRB 01-041 and 01-042

IN THE MATTER OF

MELINDA LOWELL AND

DONNA J. VELLEKAMP :

:

ATTORNEYS AT LAW :

:

---

Decision

Argued: June 21, 2001

Decided: October 26, 2001

Samuel J. Samaro appeared on behalf of the District IIB Ethics Committee.

Donald B. Liberman appeared on behalf of respondent Melinda Lowell.

Respondent Donna J. Vellekamp waived appearance for oral argument.

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

These matters were before us based on recommendations for discipline filed by special master Steven R. Rubenstein.

Respondent Melinda Lowell was admitted to the New Jersey bar in 1981. During the relevant time, she maintained an office for the practice of law in Hackensack, New Jersey. At the August 2000 ethics hearing before the special master, she stated that she is

no longer practicing law. She has no disciplinary history.

Respondent Donna J. Vellekamp was admitted to the New Jersey bar in 1984. At times, she worked as an associate in Lowell's firm and, later, as a bookkeeper. She presently practices law with a firm in Closter, New Jersey. She has no disciplinary history.

The two complaints against Lowell contained forty-eight counts[1] and alleged violations of RPC 1.2(d) (counseling or assisting a client in conduct that the lawyer knows is illegal, criminal or fraudulent); RPC 1.3 (lack of diligence); RPC 1.5(a) (excessive fees); RPC 1.10(b) (imputed disqualification of law firm); RPC 1.16(d) (failure to return an unearned retainer upon termination of representation); RPC 3.3(a)(1) (false statement of a material fact to a tribunal); RPC 3.3(a)(2) (failure to disclose a material fact to a tribunal when disclosure is necessary to avoid assisting an illegal, criminal or fraudulent act by the client); RPC 3.3(a)(4) (offering evidence the lawyer knows to be false or failure to take remedial measures after the lawyer ascertains that false evidence has been offered); RPC 3.3(a)(5) (failure to disclose a material fact to a tribunal knowing that the tribunal may be misled by such failure); RPC 3.4(c) (knowingly disobeying an obligation under the rules of a tribunal); RPC 4.1(a)(1) (false statement of material fact or law to a third person); RPC 4.1(a)(2) (failure to disclose a material fact to a third person when disclosure is necessary); RPC 7.1(a)(1) (false or misleading communication about the lawyer or the lawyer's services); RPC 8.4(a) (knowingly assisting or inducing another to violate the Rules of

[1] Thirty-eight of the counts against Lowell and Vellekamp concerned specific instances of alleged excessive fees.

Professional Conduct); RPC 8.4(b) (commission of a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or 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 complaint against Vellekamp contained forty counts and alleged violations of RPC 1.2(d); RPC 1.5(a); RPC 3.3(a)(2), (4) and (5); RPC 3.4(c); RPC 7.1(a)(1); and RPC 8.4(b); RPC 8.4(c) and RPC 8.4(d).

I. The Korinis Matter (District Docket No. IIB-97-10-E) (Count One)

The first complaint against Lowell contained forty-seven counts. The first three related to Diane Korinis' 1997 grievance. The remainder of the counts arose from the DEC's investigation of that grievance.

Count one concerned certifications that were filed in the Korinis v. Korinis divorce case. Lowell represented Andrew Korinis, Diane Korinis' husband. The facts of this count were presented by stipulation of the parties. It was stipulated that, on at least six occasions, Lowell instructed her associate, Kathleen Andes-Stylianou, or her secretary, Kathy Quijije, to sign her name on certifications that were filed with the court. Except in one instance, Andes-Stylianou and Quijije put their initials after Lowell's name on the certifications. According to Andes-Stylianou, the omission in that one instance was inadvertent.[2]

---

[2] According to the complaint, on August 5, 1996, the court stated that it could "not consider certifications not signed by the person making the certification but by another person

The parties also stipulated that, "at [Lowell's] direction," on March 8, 1996, Quijije signed the name of Priscilla Ewing, Lowell's paralegal, on a certification in Cumins v. Cumins, without Ewing's consent. The certification was filed with the court. When Ewing learned about the certification, she requested that it be withdrawn. After the certification was withdrawn, Ewing prepared her own certification, which was not filed because Lowell withdrew from the case.

II. The Korinis Matter (District Docket No. IIB-97-10-E) (Count Two)

As stated above, Lowell represented Andrew Korinis in the divorce action. Barry Baime and Barry Croland of the Stern Steiger law firm represented Diane Korinis. [3]

In 1995, Lowell hired Ewing, who had previously worked as a paralegal for the Stern Steiger firm. In an August 11, 1995 letter to Judge Donald deCordova, Stern Steiger argued that Lowell should disqualify herself from the Korinis v. Korinis case because she had hired Ewing.[4] The issue was resolved when Lowell agreed to "screen" Ewing from the case.

One of the issues raised by Diane Korinis in her grievance was that Ewing worked

---

signing the certifier's name." Despite the court's warning, Lowell repeated the practice on two subsequent occasions, November 8, 1996 and January 7, 1997. However, the stipulation did not include the alleged court warning.

[3] In 1995, the Stern Steiger firm was dissolved and Croland and Baime became members of the firm of Shapiro & Croland. However, in this decision, the name Stern Steiger refers to both firms.

[4] The letter also stated that Lowell should disqualify herself and that Judge deCordova should recuse himself from the case because Lowell had offered employment to Judge deCordova's law clerk. Lowell withdrew that employment offer.

on the Korinis v. Korinis case when she was a paralegal at Stern Steiger and continued to work on the case as Lowell's paralegal.

When Lowell received the Korinis grievance on April 7, 1997, she requested that Ewing prepare a certification stating what she had done on the case, during her employment with Lowell. On April 8, 1997, Ewing drafted a letter, rather than a certification. In the second paragraph of the letter, she stated that she had no involvement whatsoever in the Korinis case while at Lowell's firm, not even in a "ministerial position." However, in the third paragraph of the letter, Ewing stated that "[o]n occasion, I would be inadvertently asked to view a document concerning this matter or work on the file. However, once I reminded the attorney of the 'Chinese wall,' the request was immediately withdrawn." There was also another version of the April 8, 1997 letter, in which the above paragraph was crossed out.

On April 9, 1997, Ewing gave Lowell the following memorandum regarding the April 8, 1997 letter:

> You [Lowell] were not content with the truth and forced me to remove all reference to your personal conversations with me concerning the Korinis matter. I am appalled and dismayed at the coercion that you exerted in order to obtain a letter from me that was inaccurate. If I learn that you have used that letter dated April 8, 1997 in any way or have given it to any person, I will provide the information you forced me to remove from the letter.

That same day, April 9, 1997, Ewing left Lowell's employment and returned to Stern Steiger.

Lowell testified that it was not until she received the Korinis grievance that she

learned that Ewing had worked on the Korinis v. Korinis case while at Stern Steiger. According to Lowell, Ewing had told her that "she wouldn't know Diane Korinis if she fell over her." However, the grievance included correspondence from Diane Korinis to Ewing at Stern Steiger. Lowell testified that, when she confronted Ewing with that correspondence, Ewing replied that she did not remember having worked on the case previously, but that the correspondence indicated that she must have done so and that she had received "an anonymous copy [of the grievance] in the mail." Lowell testified that the information so disconcerted her that

> I was crying. I don't know what I said. I was floored....I was so floored once she said she had received an anonymous copy in the mail and did not call me I was afraid to talk to [Ewing] because I didn't trust her anymore.... At that point I may have left [Ewing's office]. I may have come back. I was crying. I was upset. I was freaking out. I came back in and I said to her – we discussed it some more and I said – wrote [the memorandum requesting a certification from Ewing].

Lowell stated that she had agreed to the "screen" because Ewing had formerly worked at Stern Steiger and because of Ewing's relationship with David Torchin, an associate at Stern Steiger. Lowell initially described that relationship as Ewing's "sleeping with the enemy." Later, she testified that, when she used the term, she meant that Ewing "was close with the enemy" because Ewing was friendly with "a lot of people at [Stern Steiger], including David Torchin."

Lowell was adamant that she had scrupulously maintained the "screen" between Ewing and the Korinis v. Korinis case and emphatically denied having asked Ewing to make

any changes to her letter.

Lowell accused Ewing of having stolen documents from her office.

Ewing, in turn, testified that, although she had not performed substantial work on the Korinis v. Korinis case while at Stern Steiger, she had worked on it, a fact known to Lowell not only from Ewing, but also from a letter from Stern Steiger listing Ewing's cases.

Ewing further testified that, despite Lowell's representation to the court and to the Stern Steiger firm that Ewing would be "screened" from the case, Lowell frequently requested that she work on it and even questioned Ewing about Stern Steiger's litigation strategies. According to Ewing, whenever she reminded Lowell of the "screen," Lowell replied that she would decide what work Ewing would perform and that, if Ewing wanted to keep her job, she would do what she was told.

According to Ewing, when Lowell asked her to prepare the certification in reply to the Korinis grievance, stating that there had been no breach in the "screen," Ewing protested that "there was routinely a breach" and reminded Lowell of all the times that Lowell had asked her to work on the case.

Ewing testified that, because Lowell was upset and "intimidating," she finally agreed to prepare a letter. Ewing added that Lowell "was standing over this shoulder, pointing at the screen, asking me to write things, and then we would go over almost every word.... It went on for hours and I just gave in. I was tired."

Ewing testified that, because the second paragraph of the letter was not true, after

Lowell left her office she added a third paragraph, which, although not entirely true, was closer to the truth. However, according to Ewing, Lowell crossed out the third paragraph and had her sign another copy without that paragraph. That evening, according to Ewing, she decided to leave Lowell's firm because "this was the last in a series of many cases that she had asked me to work on and either write a certification that wasn't true or do something that wasn't the truth or honest, and I just couldn't live with myself and I couldn't work there anymore." Therefore, Ewing testified, she prepared the April 9, 1997 memorandum to Lowell and left her employ that day.

As to Lowell's accusation that Ewing had stolen documents from the office, Ewing admitted that she took copies of certain documents because she was "nervous about some of the things I was asked to do and some of the things I saw, I was scared...I felt I needed to protect myself."

Contrary to Ewing's testimony, Andes-Stylianou testified that there was a screen between Ewing and certain cases, including Korinis v. Korinis, and that she was not aware of any breach of the screen. Similarly, Quijije testified that she was aware of the screen and that she did not give any documents concerning the Korinis v. Korinis case to Ewing. No testimony was elicited from her as to whether she observed any breach of the screen by anyone else.

III. The Korinis Matter (District Docket No. IIB-97-10-E) (Count Three)

On November 20, 1996, there was a hearing before Judge deCordova in the Korinis v. Korinis case concerning, among other things, Andrew Korinis' visitation with his children. During the hearing, Judge deCordova stated that he wanted the Korinis children seen by a Dr. Schreiber, who was the oldest child's therapist, "to evaluate what these visitations [sic] problems are and to make a recommendation to the parties how to solve it [sic]." It is clear from the transcript that Judge deCordova expected that the parties would work out the details of the visit to Dr. Schreiber.

On November 22, 1996, Lowell submitted an order to Judge deCordova. The order contained the usual paragraph stating that the matter had come to the attention of the court on Lowell's application, on notice to Baime, and then directed that "the Korinis children go to see Dr. Thomas Schreiber... today, November 22, 1996, at 1:45 p.m. with Dr. Andrew Korinis" and that the remaining issues be included in a separate order.

It is undisputed that Lowell did not speak with Baime prior to submitting the order to Judge deCordova and that Baime did not receive a copy of the signed order until sometime after 2:00 p.m. on November 22, 1996. After Baime learned of the order, he filed an application for an order to show cause.[5] In her November 25, 1996 reply to Baime's application, Andes-Stylianou stated that her office had "faxed" the order to Baime at 1:15 p.m. However, the actual "fax" record, which was attached to Andes-Stylianou's letter,

[5] Although the record does not state what Baime sought in the order to show cause, it is clear that the application dealt with the November 22, 1996 order.

showed that the "fax" was not transmitted until 2:06 p.m.

Lowell testified that Andrew Korinis had called her on November 22 to inform her that Dr. Schreiber could see Jordan Korinis at 1:45 p.m. that day and that he would have to take Jordan out of school. Lowell further testified that, when she spoke with Judge deCordova's law clerk about the appointment, he told her to immediately submit an order dealing with that issue only and that the order regarding the remaining issues had to be submitted pursuant to the five-day rule. According to Lowell, she dictated the order to Andes-Stylianou to type, then instructed Andes-Stylianou to immediately bring the order to Judge deCordova's chambers.

Lowell testified that she spoke with Baime "as little as possible" and that any communication between them was either in writing or through Andes-Stylianou. She stated that it never occurred to her that Baime would want to be heard on the order before it was signed. However, according to Lowell, when she told Andes-Stylianou to deliver the order to the court, she also instructed Quijije to "fax" it to Baime. She later learned that the order "wasn't faxed in as timely a fashion as Mr. Baime would have liked. That had nothing to do with me."

Although Quijije testified at the ethics hearing, there was no testimony elicited from her as to why the order was not immediately "faxed" to Baime.

Baime testified that he did not receive a "faxed" copy of the order until after Andrew Korinis had taken Jordan from school. According to Baime, he first learned of the order

when Diane Korinis called him at about 1:45 p.m. that day and asked why he had not told her about the order. Baime stated that Judge deCordova's rulings on November 20 did not include any directive that Andrew Korinis was to take Jordan to Dr. Schreiber or that he was to be taken on a specific day or at a specific time.

Baime further testified that Andes-Stylianou had no discretionary authority on the cases that she handled as Lowell's associate. According to Baime, Andes-Stylianou could not even agree to a simple request for an adjournment of a motion without first consulting Lowell. In fact, Baime recalled that one of his clients instructed him not to discuss the case with Andes-Stylianou because "it was a waste of that client's money because she [Andes-Stylianou] couldn't make any decisions."

Andes-Stylianou, in turn, testified that, in the mid- to late morning on November 22, Lowell dictated the order while she typed it, then instructed her to take the order to the court immediately because the judge was waiting for it. Andes-Stylianou further testified that, as she was leaving the office for the courthouse, she asked Lowell and Quijije if the order was being "faxed" to Baime and "got a general acknowledgment from both of them, yes, yes hurry up and go." She arrived at the courthouse sometime before 12:30 p.m., gave the order to Judge deCordova's law clerk and then waited for the law clerk to return with the signed order. According to Andes-Stylianou, she did not see Judge deCordova and did not speak with the clerk about the order because the clerk immediately took it from her. She then returned to her office with the signed order and gave it to Quijije.

Andes-Stylianou further testified that she incorrectly stated, in her reply to Baime's application, that the order had been "faxed" to him at 1:15 p.m. According to Andes-Stylianou, before writing that reply, she spoke with Lowell and with Quijije and was told by Lowell that "the staff was responsible for the faxing, talk to them." Quijije told her the order had been "faxed" to Baime right after she left the office to deliver the order to the court. With respect to her statement that the "fax" record showed the time as 1:15 p.m., Andes-Stylianou stated that she misread the record, which showed the "duration" of the transmission as "00:01'15."

The complaint charged Lowell with violations of RPC 1.10(b), RPC 3.3(a)(1), RPC 3.4(c) and RPC 8.4(c) in the Korinis v. Korinis case.

IV. The Markert Matter (District Docket No. IIB-97-10-E) (Count Four)

In 1997, Lowell represented the plaintiff, Conrad Markert, in a divorce action. Baime represented the defendant, Leslie Markert. In March 1997, Baime forwarded to Lowell a stipulation extending the time to answer the complaint to April 26, 1997.

In June 1997, without Baime's knowledge, Lowell had Quijije type the following sentence in the stipulation: "Plaintiff objects to [Stern Steiger]'s continued representation of Defendant due to conflict of interest." The stipulation extended the time to file an answer to June 25, 1997. Lowell then told Andes-Stylianou to sign the stipulation and file it with the court. Lowell was not in the office at the time; her conversations with Quijije and with

Andes-Stylianou were by telephone. Andes-Stylianou refused to sign the stipulation because Baime had not been consulted about the addition. The stipulation was never filed. Apparently, a default had already been entered against Leslie Markert and Lowell had applied for a default judgment. There was no explanation in the record as to why Lowell wanted the stipulation filed if a default had already been entered.

Lowell testified that she told Quijije to add the sentence to the stipulation because she did not want to waive her client's right to object to Baime's representation of Leslie Markert. According to Lowell, when Andes-Stylianou objected to signing the stipulation, Lowell told her "I don't care what you tell Baime. Baime knows about it [her objection to his representation of Leslie Market]. Call Baime. I could care less, but get the stipulation signed." According to Andes-Stylianou, Lowell stated to her that "she was the boss, she was telling me to sign it, I was to sign it and take it to the courthouse for filing." Andes-Stylianou stated that the discussion "went back and forth a couple of times," became "lively" and made her "upset."

Andes-Stylianou further testified that she thereafter spoke with Baime and that Baime "wanted to work something out" because there was an "issue whether a default had been entered." According to Andes-Stylianou, she told Baime that she did not know whether a default had been entered and that Baime "would have to tell me what his request was, I would take it to [Lowell], I had just returned from maternity leave and I didn't know what was going on."

For her part, Quijije testified that Andes-Stylianou became upset when Lowell told her to sign the stipulation and that there "was a big disagreement...I know [Andes-Stylianou] was very upset and she wasn't going to file it unless Barry Baime knew and I believe she called him."

The complaint alleged that Lowell's conduct in the Markert v. Markert case violated RPC 8.4(a), RPC 8.4(c) and RPC 8.4(d).

V. The Excess Fee Matters (District Docket No. IIB-97-10-E) (Lowell) (Counts Five through Forty-Two) and District Docket No. IIB-99-04E (Vellekamp) (Counts One through Thirty-Eight)

The complaint against Lowell alleged that, in thirty-eight instances during 1996, Lowell billed various clients for her time, when, in fact, the work had been done by a paralegal or a more junior attorney. The complaint against Vellekamp alleged that she "participated along with [Lowell] in causing [the false] monthly bills for [Lowell's] services to be sent to clients."

It is undisputed that, except for the billing, Lowell was a "micro-manager." Lowell explained that she reviewed every document before it was sent out by anyone, that she received copies of documents received by anyone in her firm and "copies of every telephone conversation had between my staff and my -- and anyone." However, Lowell contended, she had little involvement in the billing. She claimed that she frequently neglected to record the time spent on cases and that she would often request that other staff members record that

time for her.

Ewing testified that, on approximately twenty to thirty occasions, Lowell requested that she put Lowell's initials on the time sheets to reflect work performed by Lowell, instead of Ewing. For example, on the Hesse v. Hesse case, Ewing prepared a post-judgment motion to enforce litigants' rights, including the plaintiff's certification in support of the motion. On the first page of the certification, Lowell wrote "great job," thus praising Ewing for her work, and asked Ewing to "put in 3.0 sticker for ML for prep of cert." Ewing explained that she and the attorneys in the firm recorded their time on stickers that would then be affixed to client billing sheets. According to Ewing, Lowell made some stylistic, but not substantial, changes to Ewing's draft of the certification.

Ewing also testified that, in 1996, Quijije showed her time sheets with Ewing's initials crossed out and Lowell's initials replacing Ewing's time entries. Quijije also showed Ewing the corresponding invoices, where clients had been billed for Lowell's time, instead of at Ewing's lower rate.

Quijije, in turn, testified that, for a period of two to three months, she noticed that Ewing's initials on time stickers had been crossed out and Lowell's initials inserted instead. She did not remember when that occurred, but she recalled that she showed the cross-outs to Ewing at the time and "made a joke" about Ewing's status as an attorney.

* * *

For her part, Vellekamp testified that she began working for Lowell in October 1983, while she was still in law school, and continued as an associate with Lowell's firm until April 1994. After April 1994, she worked as a bookkeeper for Lowell, on a part-time basis. She stated that she was responsible for most of the cross-outs on the above-mentioned billing sheets. According to Vellekamp, she made the changes because Lowell was "horrific at keeping her own time...she does not write anything down when it comes to time." She explained that Ewing's billing stickers would sometimes indicate that Lowell had also worked on the file, but there would be no corresponding billing sticker from Lowell. Therefore, according to Vellekamp, she would "create a sticker for [Lowell]. Most times, I would take [Ewing's time sticker] and use it instead of making another one for [Lowell] and then paralegal time did not get billed and [Lowell's] time did get billed."

Vellekamp admitted that she simply "estimated" the time Lowell had spent on the cases, although, at other times she would prepare accurate bills, based on discussions with Lowell.

Vellekamp corroborated Ewing and Andes-Stylianou's testimony that Lowell was very controlling and prone to pressuring her employees to do things against their will. She stated that she could recall "hundreds" of instances where it happened to her. She also testified that, when she worked as an associate for Lowell, she did not have any discretion

in handling the cases assigned to her.

The complaints charged that Lowell violated RPC 1.5(a), RPC 7.1(a)(1) and RPC 8.4(c) and that Vellekamp violated RPC 1.5(a) and RPC 7.1(a)(1) with respect to the excessive fees.

VI. The Rapp Matter (District Docket No. IIB-97-10-E) (Count Forty-Three)

In April 1996, Anita Rapp retained Lowell to file a divorce complaint in New York[6] and an application for pendente lite support. Rapp paid Lowell a $250 consultation fee and an additional $5,000 retainer. Lowell never filed the pendente lite motion.

In July 1996, Rapp discharged Lowell. On September 3, 1996, Lowell billed Rapp $5,472: 15.4 hours @ $300 and 14.2 hours @ $60.[7] The bill showed that someone had worked four hours on July 25, 1996 – "draft pendente lite motion & review financials." Although Rapp had paid Lowell $5,250, she was only credited with a payment of $5,000.

Rapp testified that she discharged Lowell prior to July 25, 1996 because Lowell had not filed the pendente lite motion and had not returned her telephone calls. She further testified that, when she received the bill in September 1996, she telephoned Lowell's office and complained that she had been billed for work performed after she had discharged

---

[6] Lowell was also admitted in New York. In 1996, her letterhead listed a New York office address.

[7] The bill did not itemize the work that was performed at $300 an hour or at $60 an hour.

Lowell. She also had her accountant, who had referred her to Lowell, write a letter on her behalf, requesting a refund from Lowell.

Ewing testified that, on or about July 25, 1996, Lowell told her that Rapp had terminated Lowell's services and instructed Ewing to draft a pendente lite motion, put the motion in the front of the Rapp file and then prepare the file for delivery to Rapp. According to Ewing, Lowell told her that she wanted a draft of the motion in the file because she was concerned that she would "get in some kind of trouble for not having performed the services that she had been requested to do by the client" and because there was "still some retainer left" that she did not want to return to Rapp.

Lowell denied that the motion had been prepared after Rapp had terminated her services. She testified that she had delayed preparing the motion because of other pending proceedings between Rapp and her husband. However, a message from the attorney who was handling the other proceedings in behalf of Rapp contradicted Lowell's testimony. The message stated that those proceedings should not delay the filing of the motion.

The complaint alleged that Lowell violated RPC 1.3, RPC 8.4(c) and RPC 8.4(d) in the Rapp matter.

VII. The Marmon Matter (District Docket No. IIB-97-10-E) (Lowell) (Count Forty-Four) and District Docket No. IIB-99-04E (Vellekamp) (Count Thirty-Nine)

In 1991, Karen Marmon retained Lowell to represent her in a divorce action against

her husband, Michael Marmon.[8] One of the issues was whether funds given to the couple by Karen Marmon's father during the marriage were loans or gifts.

In May 1991, Lowell filed an application for pendente lite support for Marmon. Marmon's certification in support of the motion stated that her father had lent her more than $110,000 in 1990 and attached six promissory notes. The notes, which were dated February 28, April 30, June 30, August 30, October 31 and December 31, 1990,[9] showed that Marmon promised to pay her father, on demand, various amounts totaling $111,000.

Michael Marmon, in turn, claimed that the promissory notes were shams, that they had been manufactured for the divorce action and that the funds had been given to the couple as gifts.

In Marmon's reply certification, she denied that the notes were shams. She stated that every few months she signed the notes for the amount of monies given to her during that time. Lowell also submitted a certification from Marmon's father, Irving Domnitch, stating that the funds given to his daughter were "to be considered loans for all purposes." In addition, at the trial, Domnitch testified that the monies represented by the promissory notes were loans, not gifts. That testimony was untrue. Indeed, at the ethics hearing, Marmon testified that the notes did not represent loans from her father, that the funds given to her by

---

[8] After her divorce, Karen Marmon apparently began using her maiden name, Domnitch. She later remarried and became known as Karen Felton. For ease of reference, we will refer to her as Karen Marmon.

[9] Although one of the notes is dated 1991, in the divorce action Marmon stated that she inadvertently wrote 1991, instead of 1990.

her father in 1990 were gifts and that it was Lowell's idea to certify to the court that the funds were loans and to manufacture the promissory notes to support the false certification. According to Marmon, she gave Lowell copies of bills paid by her father and then Lowell drafted the notes based upon those amounts. Marmon stated that she did not sign the notes on the dates indicated, but signed all of them at the same time or over a few days, in 1991. Although Marmon did not recall whether Lowell or Vellekamp had given her the notes to sign, she stated that at the time she "wasn't really that involved with [Vellekamp]."

According to Marmon, when she told Lowell that she was reluctant to certify that the gifts were loans, Lowell replied that "these kinds of things happen all the time and not to worry about it." Marmon added that "I was advised by counsel that this was the proper thing to do, so this is what I did...whatever [Lowell] told me to sign, I signed....I'd never been through a divorce before. She's a divorce attorney. Whatever she told me to do, I did."

For her part, Lowell testified that Marmon, Domnitch and Martin Metz – an attorney who is Marmon's brother-in-law and Domnitch's employee – all told her that the monies given to Marmon by her father were loans or advances on her future inheritance and that they were never considered to be gifts. Therefore, Lowell stated, she advised Marmon that she needed to document those loans. According to Lowell, Marmon had prepared the promissory notes. In the record, there is a note handwritten by Lowell about the preparation of a motion for pendente lite support for Marmon. Lowell identified the note as a "homework assignment" for the client. The note stated that "we must be able to document

by way of IOUs to your father that all support he has given you & the kids is loaned to you – please get your accountant to document amounts paid and dates so we can document with IOUs." Next to that statement, Lowell wrote "Melinda to prepare."

Vellekamp testimony was that she did not prepare the notes and was not present when the notes were signed by Marmon. She admitted that she added up the bills that Marmon had given to Lowell to arrive at the amounts shown on the promissory notes, but denied any other involvement in the creation of the promissory notes.

With respect to a time entry that showed that she had prepared promissory notes in May 1991, Vellekamp testified that the entry did not relate to the six promissory notes at issue here. According to her, the entry referred to her preparation of promissory notes for funds lent to Marmon by Domnitch during the litigation. There is no allegation that those notes were fraudulent.

Vellekamp also admitted that she prepared the initial draft of Marmon's certification in support of the pendente lite application. However, according to her, it was Lowell who provided the information for the draft. The billing records show that Lowell prepared the final certification and met with Marmon about the certification.

VIII. The Marmon Matter (District Docket No. IIB-97-10-E) (Lowell) (Count Forty-Five) and District Docket No. IIB-99-04E (Vellekamp) (Count Forty)

Also at issue in the Marmon divorce case was whether $700,000 in bearer bonds given to Marmon by her father were loans or gifts to the couple, subject to equitable

distribution. In June 1991, the court entered an order restraining the parties from transferring, dissipating, hypothecating or mortgaging any assets owned by "defendant, plaintiff jointly."

Sometime after June 1991, Domnitch, who had been paying Marmon's legal expenses, refused to pay any more fees. At that time, Marmon owed Lowell more than $100,000. It is undisputed that Lowell agreed to cap her legal fees at $125,000, if Marmon paid the $100,000 immediately. It is also undisputed that Marmon cashed a bearer bond to pay Lowell's fee and that Lowell's broker handled the transaction for Marmon.

Lowell testified that Vellekamp handled the negotiations with Marmon for the fee cap, that she had no involvement in those discussions and that she had no knowledge of the source of the funds used to pay her fee. Vellekamp testified, however, that Lowell was "involved in the entire process" of the cashing of the bearer bond. According to Vellekamp, Lowell pressured her to convince Marmon to pay the outstanding legal fees and "left me notes daily on pieces of paper. Get [Marmon] to cash the bond; get me the $100,000." She also recalled a meeting with Lowell and Marmon, at which Lowell brought up the issue of the outstanding legal fees and told Marmon "if you have to cash a bond, cash a bond. You have to pay me. I can't meet payroll. I can't do this. Your father's not paying. You have to get me the money." Vellekamp further testified that she looked at the list of bonds that were at issue in the divorce action and brought to Marmon's attention that one of the bonds, the "Kansas City" bond, had a value of $106,000.

Vellekamp admitted that, when the brokerage check arrived at Lowell's office, she endorsed the check with Lowell's name and deposited it in Lowell's business account. There is no explanation as to why she signed Lowell's name on the check when, according to Vellekamp, it was her normal practice to use Lowell's signature stamp to deposit checks.

Marmon testified that, at a meeting with Lowell and Vellekamp, one of them suggested that Marmon cash a bearer bond to pay the outstanding legal fees. According to Marmon, she replied that the judge had ordered her not "to touch them," but Lowell had told her not to worry about it because "nobody [would] ever know." Marmon testified that Lowell arranged for her to go to Lowell's broker in New York to cash the bonds; when she arrived, the broker told her that he had spoken with Lowell and that everything had already been arranged. According to Marmon, she merely had to sign a receipt. As far as she knew, the funds were then transferred to Lowell's account.

IX. The Marmon Matter (District Docket No. IIB-97-10-E) (Count Forty-Six)

The complaint alleged that, from February 1991 to June 1993, Lowell billed Marmon $292,394 for her services and that a reasonable fee would have been $78,534. The allegations were taken from an expert report obtained by Marmon in connection with a civil suit that she filed against Lowell, charging, among other things, legal malpractice and excessive fees.

There was no evidence presented at the ethics hearing regarding this count.

The ethics complaints charged that Lowell and Vellekamp violated RPC 1.2(d), RPC 3.3(a)(1), RPC 3.3(a)(2), RPC 3.3(a)(4), RPC 3.3(a)(5), RPC 3.4(c), RPC 8.4(b), RPC 8.4(c) and RPC 8.4(d) in the Marmon v. Marmon case and that Lowell also violated RPC 1.5(a).

Finally, the complaint against Lowell (Count Forty-Seven) alleged that the conduct described in the complaint "demonstrate (sic) a pattern of unprofessional conduct revealing willingness by Lowell to routinely disregard and violate the Rules of Professional Responsibility," in violation of RPC 8.4, presumably sub-section (a).

X. The Kennedy Matter (District Docket No. IIB-98-15-E)

The facts of this matter were stipulated by the parties. John and Gail Kennedy were divorced in 1977. The judgment required that John pay $550 a month in alimony. In 1988, John stopped paying alimony, purportedly because he and Gail agreed that he would no longer have to pay alimony if he paid their children's college tuition. John, in fact, paid the tuition.

In May 1997, Lowell filed a complaint on behalf of Gail, seeking $58,500 in unpaid alimony from John. However, Lowell was unable to serve the complaint on John until September 8, 1997.

Sometime prior to September 1997, John and his new wife had listed their Ridgewood, New Jersey house for sale. On September 9, 1997, Lowell sent a certified letter to Tarvin Realtors, the listing broker. In that letter, Lowell stated that she represented Gail

Kennedy in a pending civil action against John Kennedy and that

> I am writing to advise your office that any and all proceeds from the sale of 363 Crest Road, Ridgewood must be held in escrow. I would appreciate your forwarding this correspondence to Mr. Kennedy's real estate attorney as I was unable to ascertain his/her name from your offices.

When Lowell sent this letter, there was no court order requiring that the sale proceeds be escrowed. Weeks after September 9, 1997, Lowell filed a motion seeking, among other things, an order for the escrow of the proceeds. The court denied the application.

According to John Kennedy, Lowell's letter caused two things to happen. First, Tarvin Realtors questioned his ability to sell the house and sought the advice of its attorney. Second, "word got out that [John Kennedy] was in the process of getting divorced from his current wife" and the "gossip made its way to his nine-year old daughter's school and...his daughter was 'terrorized' by the rumor."

The complaint alleged that Lowell's conduct in the Kennedy matter violated RPC 4.1(a)(1), RPC 4.1(a)(2), RPC 8.4(b) and RPC 8.4(c).

* * *

With respect to the Korinis case, the special master found that Lowell violated RPC 8.4(c), when she had her secretary sign Ewing's name on a certification without Ewing's knowledge or consent and filed it with the court. He dismissed the remainder of count one, concerning the certifications that Lowell had Quijije and Andes-Stylianou sign on her behalf. The special master stated that, while the certifications technically violated R.1:4-4(b)

and R. 1:6-6, they were not intended to mislead or prejudice anyone. The special master found that Lowell violated RPC 1.10(b) by failing to maintain the "screen" between Ewing and the Korinis case, finding Ewing's testimony to be credible and Lowell's to be inconsistent and not believable. Finally, the special master found that Lowell violated RPC 3.4(c), although not RPC 3.3(a)(1), when she submitted to the court the order concerning Jordan Korinis' appointment with Dr. Schreiber, without notifying her adversary of the order. The special master concluded that Lowell "made a deliberate effort to circumvent the Court Rules for the specific purpose of not informing Baime that the Order was being presented so that he could not object to it."

With respect to the Markert case, the special master found that Lowell violated RPC 8.4(a), when she attempted to induce Andes-Stylianou to file with the court a stipulation containing additional language unknown to Baime. The special master found credible Andes-Stylianou and Quijije's testimony that Lowell had insisted that Andes-Stylianou sign and file the stipulation, despite Andes-Stylianou's expressed concern that Baime was unaware of the insertion. The special master dismissed the alleged violations of RPC 8.4(c) and RPC 8.4(d) because the stipulation was not filed with the court due to Andes-Stylianou's refusal to sign it.

With respect to the Rapp case, the special master found that Lowell violated RPC 8.4(c), when she instructed Ewing to prepare a motion after Rapp terminated Lowell's services. The special master rejected Lowell's testimony that the motion was prepared

before Rapp discharged her and found consistent Ewing and Rapp's testimony that the motion was prepared after Lowell's representation ended. The special master further found that Lowell violated RPC 1.3, when she failed to promptly file the pendente lite motion, despite Rapp's request. Finally, the special master found that Lowell violated RPC 1.16(d) by failing to refund the unearned portion of Rapp's retainer. He concluded, however, that Lowell's conduct in the Rapp matter did not violate RPC 8.4(b).

With respect to the Marmon case, the special master found that Lowell prepared and filed with the court fraudulent promissory notes and false certifications and counseled her client to sign certifications that she knew were false, in violation of RPC 1.2(d), RPC 3.3(a)(1), (2), (4) and (5), RPC 3.4(b), RPC 8.4(b), RPC 8.4(c) and RPC 8.4(d). Again, the special master rejected as incredible Lowell's testimony that she had been told that the monies given to Marmon by her father were loans, rather than gifts. The special master found Marmon and Vellekamp's testimony on this issue to be credible.

The special master dismissed the charges against Vellekamp concerning the false promissory notes, finding that she was not involved in the creation of the notes, that she prepared the certifications as "a scribe at [Lowell's] direction," that she was not aware that the certifications were false and that she was not aware that the calculations she made from Marmon's bills were to be used for an improper purpose.

The special master found that Lowell and Vellekamp violated RPC 8.4(a) and RPC 8.4(c), but not RPC 8.4(b), RPC 3.3(a)(2) or RPC 3.4(c), when they had Marmon cash a

bearer bond to pay Lowell's legal bill, in violation of a court order. Once again, the special master found that Lowell's testimony was unworthy of belief, accepting as credible Marmon and Vellekamp's testimony.

With respect to the Kennedy matter, the special master found that Lowell's false statement to Tarvin Realtors that the proceeds of the Kennedys' house sale had to be held in escrow violated RPC 4.1(a)(1) and RPC 8.4(c), but not RPC 4.1(a)(2) or RPC 8.4(b).

The special master dismissed the counts against Lowell and Vellekamp concerning the alleged excessive fees, finding that, "while there was some testimony about changes to the billing records, I don't think that the testimony that was offered would rise to the level of clear and convincing proof of the allegations."

The special master recommended that Lowell be suspended for three years and that Vellekamp receive an admonition.

* * *

Upon a de novo review of the record, we are satisfied that the special master's conclusion that Lowell and Vellekamp were guilty of unethical conduct is fully supported by clear and convincing evidence.

It is undisputed that, in the Korinis v. Korinis case, Lowell submitted an order to the court without notifying her adversary of the terms of the order. Lowell argued that she did not have to notify Baime because the court had stated, during oral argument two days before, that Andrew and Diane Korinis should arrange for the children to see Dr. Schreiber.

However, the court had not ruled that Andrew Korinis, acting unilaterally, should take Jordan from school on a particular day to see Dr. Schreiber. Lowell also argued that she was not required to notify Baime because neither the judge nor the judge's law clerk had told her to do so. That argument is without merit and requires little discussion. Lowell was an experienced attorney. The court should not have had to specifically remind her of the applicable court rules.

We agree with the special master's conclusion that Lowell "made a deliberate effort to circumvent the Court Rules for the specific purpose of not informing Baime that the Order was being presented so that he could not object to it" and that Lowell violated RPC 3.4(c), as well as RPC 8.4(d) (conduct prejudicial to the administration of justice). Although this count of the complaint – unlike others – did not specifically charge Lowell with a violation of RPC 8.4(d), the facts alleged therein gave her sufficient notice of a potential finding of a violation of the rule. Furthermore, the record developed below contained clear and convincing evidence of the violation. Lowell did not object to the admission of such evidence in the record. In light of the foregoing, we deem the complaint amended to conform to the proofs. R. 4:9-2; In re Logan, 70 N.J. 222, 232 (1976).

Lowell displayed a similar disregard of her obligation to notify her adversary, when she added a sentence to Baime's stipulation extending the time for his client to answer the complaint in the Markert v. Markert case. According to Lowell, she added the sentence in order to preserve her client's right to object to Baime's representation of the defendant. She

also claimed that she had no objection to Andes-Stylianou's advising Baime of the addition. However, Andes-Stylianou testified credibly that, when she told Lowell that she wanted to review the stipulation before she agreed to sign it, Lowell replied that "she was the boss" and told Andes-Stylianou "to sign it, I was to sign it and take it to the courthouse for filing." Andes-Stylianou stated that the discussion "went back and forth a couple of times," became "lively" and made her "upset." Quijije confirmed that Andes-Stylianou became upset when Lowell told her to sign the stipulation and that there was a "big disagreement" between Lowell and Andes-Stylianou. If Lowell had indeed told Andes-Stylianou that she had no objection to Andes-Stylianou's speaking with Baime about the insertion, there would have been no "big disagreement" or "lively" discussion.

The issue is, however, whether Lowell's failed attempt to induce Andes-Stylianou to sign and file the stipulation constituted unethical conduct. The insertion did not interfere with the purpose of the stipulation, which was to extend Baime's time to answer the complaint. In fact, the stipulation may have been superfluous because there was testimony that a default may have already been entered against Baime's client. It is crucial to the proper administration of justice, however, that there be a basic trust between adversaries and that an attorney can expect that his or her adversary will not submit orders or stipulations to the court without his or her knowledge. "The adversary system depends on the effectiveness of adversary counsel...There cannot be genuine respect of the adversary system without respect for the adversary, and disrespect for the adversary system bespeaks disrespect for the

court and the proper administration of justice." In re Vincenti, 114 N.J. 275, 281-82 (1989).

The evidence is that Lowell attempted to pressure Andes-Stylianou to file the stipulation without consulting with Baime and that, but for Andes-Stylianou's refusal to do so, the stipulation would have been filed. Therefore, we find that Lowell violated RPC 8.4(a) by her attempt to violate RPC 8.4(d).

There is a factual dispute as to whether Lowell required Ewing to work on the Korinis v. Korinis case, despite Lowell's representations to the court and her adversary that she would "screen" Ewing from the case and despite Ewing's reminders that she could not work on the case. Lowell contended that she scrupulously maintained the "screen." Andes-Stylianou testified that she was aware of the screen and that she never observed any breach of it. In contrast, Ewing testified that Lowell frequently required that she work on the Korinis v. Korinis case and even questioned Ewing about Baime's litigation strategies.

The special master found Ewing's testimony to be credible, concluding that she had no reason to be other than truthful. On the other hand, he found Lowell's testimony inconsistent and not believable. He observed that, if Lowell had scrupulously maintained the "screen," she would have had no reason to be "floored" and "crying" when she allegedly learned that Ewing had worked on the case while at Stern Steiger and had received a copy of the grievance.

We agree with the special master's assessments of credibility. Although there appeared to be animosity between Ewing and Lowell, it is unlikely that such animosity alone

would lead Ewing to falsely testify against Lowell. Ewing left Lowell's employment in 1997, more than three years before the ethics hearing. Moreover, she departed voluntarily; she was not discharged. At the time she left, she was clearly concerned about the letter that she had written at Lowell's request, stating that she had not worked on the Korinis v. Korinis case. She specifically notified Lowell, in writing, that Lowell should not use the letter, which she termed "inaccurate." According to Ewing, she left because "this was the last in a series of many cases that she had asked me to work on and either write a certification that wasn't true or do something that wasn't the truth or honest, and I just couldn't live with myself and I couldn't work there anymore." That testimony rings true, in light of the testimony of the other witnesses. We, therefore, agree with the credibility assessments of the special master and find that Lowell breached the "screen" between Ewing and the Korinis v. Korinis case. The question now is whether that conduct violated RPC 1.10(b), as charged in the complaint. That rule states that

> [w]hen a lawyer becomes associated with a firm, the firm may not knowingly represent a person in the same or a substantially related matter in which that lawyer, or a firm with which the lawyer was associated, had previously represented a client whose interests are materially adverse to that person and about whom the lawyer had acquired information protected by RPC 1.6 and RPC 1.9(a)(2) that is material to the matter.

The rule does not, by its terms, apply when a paralegal switches firms. However, the New Jersey Supreme Court Advisory Committee on Professional Ethics ("ACPE") Opinion 546, 114 N.J.L.J. 496 (1984), held that a law firm representing plaintiffs in toxic tort litigation could not hire a paralegal who had been employed by another firm that was an

adversary of the prospective employer in several cases. That opinion was modified by ACPE Opinion 665, 131N.J.L.J. 1074 (1992), which held that a firm could hire a paralegal to assist in the prosecution of breast implant and medical malpractice actions on behalf of plaintiffs, despite the fact that she had been employed by a firm that had a substantial practice in the joint medical defense of defendants in asbestos litigation and despite the fact that the two firms were adversaries in many asbestos cases. However, the hiring firm had to screen the paralegal from any asbestos litigation.

Lowell violated that ACPE opinion, as well as the agreement that had been reached with her adversary and the court, when she breached the ethics "screen."

The final count dealing with Lowell's conduct in the Korinis v. Korinis case alleged that Lowell had her secretary and her associate sign her name on certifications filed with the court. Except in one instance, the secretary or associate placed her initials after Lowell's name to indicate that she had signed for Lowell. We agree with the special master's determination that, while the conduct violated court rules, it did not rise to the level of unethical conduct on Lowell's part.

The complaint also alleged that the court had admonished Lowell for her practice of directing employees to sign certifications on her behalf and that Lowell continued the practice on at least two subsequent occasions. However, there was no evidence presented at the ethics hearing concerning the court's alleged rebuke. If there had been, Lowell would have violated RPC 3.4(c). In the absence of any evidence, however, we agree with the

special master and dismiss the charges relating to those certifications.

On the other hand, there is clear and convincing evidence that, in the Cumins v. Cumins case, Lowell had her secretary sign Ewing's name on a certification and then filed the certification with the court, without Ewing's consent. In fact, Lowell stipulated that she had done so. Her conduct violated RPC 3.4(c) and RPC 8.4(d).

With respect to the Rapp matter, both Rapp and Ewing testified that the pendente lite motion was drafted after Rapp terminated Lowell's services. The special master found their testimony to be credible and consistent. Again, we agree with the special master's determination on credibility and find that Lowell violated RPC 8.4(c). However, we do not find that Lowell's dishonest conduct constituted a criminal act, in violation of RPC 8.4(b). Lowell also violated RPC 1.3 by failing to file the motion for pendente lite support for Rapp, despite her client's requests, and RPC 1.16(d), by failing to return the unearned portion of Rapp's retainer.

In the Marmon v. Marmon case, there is clear and convincing evidence that Lowell had her client sign fraudulent promissory notes and false certifications and that Lowell then filed them with the court. In fact, Lowell admitted that the promissory notes were prepared in 1991 to document the alleged loans. Therefore, Lowell knew, at a minimum, that the 1990 dates on the promissory notes were false. Moreover, Vellekamp testified that Lowell instructed her to total certain bills of Marmon. Finally, Marmon testified that Lowell knew that the funds given her by her father were gifts, not loans.

The record is clear that not only did Lowell submit fraudulent promissory notes and false certifications to the court in support of the pendente lite motion, but also elicited false testimony from Domnitch, during the divorce trial, that the funds were loans, rather than gifts. Lowell also had her client cash a bearer bond, in violation of a court order, to pay her legal bill. Lowell's testimony that she was not involved in the discussions concerning the cashing of the bond and did not know where Marmon obtained the funds to pay her fees is not credible for several reasons: (1) at the time Lowell and Vellekamp were working almost full-time on the Marmon v. Marmon trial; (2) Marmon owed Lowell in excess of $100,000; (3) Lowell's firm was experiencing a cash-flow problem because of the above two facts; (4) Marmon went to Lowell's broker to cash the bond; and (5) both Marmon and Vellekamp testified that Lowell was involved in the discussions concerning the cashing of the bond. Therefore, there is clear and convincing evidence that Lowell violated RPC 1.2(d), RPC 3.3(a)(1) and (4), RPC 8.4(c) and RPC 8.4(d) in the Marmon v. Marmon case.

The complaint also charged that Lowell's conduct in the preparation and submission of the false certifications and promissory notes violated RPC 3.3(a)(2), RPC 3.3(a)(5) and RPC 8.4(b). Lowell's conduct was more than just a failure to disclose, more properly covered by RPC 3.3(a)(1) and (4), but it does not amount to criminal conduct, in violation of RPC 8.4(b). Therefore we do not find violations of RPC 3.3(a)(2), RPC 3.3(a)(5) or RPC 8.4(b). The complaint also charged that Lowell's actions in encouraging Marmon to cash the bearer bond and assisting her in doing so violated RPC 3.4(c), RPC 8.4(b) and RPC

8.4(c). However, RPC 8.4(d) is more applicable to that conduct.

The special master properly dismissed the charge that Lowell's fee in the Marmon v. Marmon case was excessive. There was no evidence presented as to the unreasonableness of the fee.

With respect to the Kennedy matter, Lowell stipulated that she sent the letter to John Kennedy's realtor stating that she represented Gail Kennedy in a pending action and that the sale proceeds from John Kennedy's house had to be held in escrow. She also stipulated that, at the time that she sent the letter, there was no court order requiring the escrow. Finally, Lowell stipulated that, when she later filed a motion seeking an order for the escrow, the motion was denied. Therefore, there is clear and convincing evidence that Lowell violated RPC 4.1(a)(1) and RPC 8.4(c) in the Kennedy matter.

The complaint charged that Lowell's letter also violated RPC 4.1(a)(2) and RPC 8.4(b). We agree with the special master that those charges should be dismissed.

The special master also dismissed all thirty-eight charges against Lowell and Vellekamp dealing with excessive fees and the billing of paralegal time as attorney time. As to the charge of excessive fees, the testimony was that Lowell often failed to account for the time she spent on client matters. There was no evidence that, if Lowell had kept such record, the clients' bills would have been less. Therefore, we agree that there is no clear and convincing evidence that the clients were charged excessive fees. However, the testimony established that paralegal time was billed as attorney time. Lowell billed her time at $300

an hour, while Ewing's time was billed at $60 an hour. Therefore, because the clients' bills contained misrepresentations, Lowell and Vellekamp violated RPC 8.4(c). Indeed, Ewing testified that, on twenty to thirty occasions, Lowell instructed her to put Lowell's initials on the time sheets to give the impression that Lowell, instead of Ewing, had performed the work. Ewing also testified that Quijije had shown her time sheets where Ewing's initials had been crossed out and Lowell's initials inserted. Quijije had also shown her the corresponding clients' bills that showed the time billed as attorney time. Quijije corroborated Ewing's testimony. Finally, Vellekamp testified that she was responsible for most of the cross-outs on the billing sheets. She explained that, because Lowell was "horrific" about documenting her time on cases, she would cross out Ewing's initials and insert Lowell's so that "paralegal time did not get billed and [Lowell's] time did get billed." According to Vellekamp, she only made those substitutions when Ewing's time notations indicated that Lowell had also worked on the file and there were no corresponding billing stickers from Lowell. Vellekamp admitted that she was simply "estimating" the time that Lowell had spent on the cases. In light of the foregoing, we dismissed the charge of excessive fees, but found that the bills contained misrepresentations, in violation of RPC 8.4(c).

There is also clear and convincing evidence that Vellekamp counseled and assisted Marmon in cashing the bearer bond, in violation of the court's order. Vellekamp, therefore, violated RPC 8.4(d).

The special master dismissed the charges against Vellekamp relating to the false certifications and promissory notes in the Marmon v. Marmon case. Vellekamp admitted that she added up Marmon's bills, provided the totals to Lowell and prepared the initial draft of Marmon's certification with information provided by Lowell. But Vellekamp denied any knowledge, at that time, that the notes were fraudulent and that the certification contained untrue statements. However, Vellekamp also assisted Lowell at the trial, where Lowell elicited testimony from Marmon's father that the funds he gave to his daughter were gifts, not loans. By that time, Lowell was well aware of the truth. There is no clear and convincing evidence, however, that Vellekamp was present during the relevant testimony or otherwise knew that the testimony or the fraudulent notes were going to be used at trial. Although it would be logical to conclude that Vellekamp was aware of the evidence Lowell intended to present at the trial, the testimony was not clear on this issue. Therefore, we dismissed the charges that Vellekamp violated RPC 3.3(a)(2) or RPC 3.3(a)(5).

In summary, Lowell 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 ACPE Opinion 665. Vellekamp violated RPC 8.4(c) and RPC 8.4(d).

The special master recommended that Vellekamp receive an admonition for her misconduct, finding that her actions resulted from pressure by Lowell and that she received no direct benefit from the misconduct. While the special master's assessment of the motive for Vellekamp's misconduct is probably accurate, her actions nevertheless warrant a

reprimand. She made misrepresentations to clients on the clients' bills and counseled and assisted her client in violating a court order. See In re Holland, 164 N.J. 246 (2000) (reprimand where the attorney, who was required to hold in trust a fee in which she and another attorney had an interest, until resolution of the dispute, took the fee, in violation of a court order); In re Milstead, 162 N.J. 96 (1999) (reprimand where the attorney disbursed escrow funds to his client, in violation of a consent order).

Lowell's conduct, on the other hand, was so egregious that it warrants the most severe discipline. She created fraudulent documents, counseled her client to lie in a certification and to disobey a court order, had an employee work on a client's case after the client had terminated Lowell's services, elicited false testimony from a witness during a trial, made misrepresentations to clients, the court and third parties, and failed to notify her adversary of the submission of an order and of an insertion made to a stipulation. Lowell displayed an alarming lack of probity in these matters. Furthermore, she showed no appreciation for the basic trust that must exist between opposing counsel. The record is clear that, even at the ethics hearing, Lowell displayed an arrogant, discourteous attitude toward the presenter, the witnesses and even the district ethics committee that docketed the grievances.

We agree with the special master conclusion that Lowell showed "no appreciation of the inappropriateness of her conduct" and failed to accept any responsibility for her actions. Instead, she attempted to blame others, including her clients, her employees and her adversary.

Equally disturbing was the negative impact that Lowell had on her employees – attorneys and paralegals alike. Although the presenter may have overstated Lowell's pernicious effect on her employees when he argued that "it was not feasible to work for or around [Lowell] and not be compromised," the testimony of two attorneys and a paralegal established that Lowell would relentlessly browbeat them until they agreed to do things that they otherwise would not have done.

There remains the issue of the appropriate sanction for Lowell's misconduct. In In re Kornreich, 149 N.J. 346 (1997), the attorney, after being involved in a minor motor vehicle accident, denied having been at the scene, lied to the police and the prosecutor and implicated her babysitter as the driver of her automobile. She also attempted to dissuade her babysitter from returning to New Jersey after charges were filed against the sitter. The prosecutor's office filed three criminal charges against the attorney, including obstruction of the administration of law. The charges were resolved by a plea agreement that permitted her to enter into a pretrial-intervention program. Throughout the ethics proceedings, the attorney refused to admit that she was the driver of the automobile. The Court suspended her for three years. Two members of the Court would have disbarred her. Like Kornreich, Lowell engaged in a "continuing course of dishonesty, deceit, and misrepresentation." Id. at 363. However, there were several mitigating factors in Kornreich that are not present in this matter. Unlike Kornreich, Lowell cannot claim youth and inexperience as mitigating factors. Lowell has been a member of the bar for twenty years. Furthermore, Lowell's

misconduct was not initiated by a moment of panic; rather, her misconduct pervaded her law practice.

In In re Pena, 164 N.J. 222 (2000), two of the three attorneys - Pena and Rocca - were disbarred, while the third was suspended for three years, for concealing from the New Jersey Division of Alcoholic Beverage Control ("ABC") that a convicted felon was their partner in a bar business. The ABC had prohibited the felon from any involvement in the business. After problems developed regarding the running of the business, the felon filed a civil complaint against the attorneys. During the trial, the attorneys denied that the felon was their partner. In disbarring two of the attorneys, the Court stated as follows:

> We are persuaded that because they are recidivists and because they have demonstrated that they have no compunction about lying to a court or a licensing agency and engaging in conduct involving fraud, deceit, dishonesty and misrepresentations before a court and licensing regulatory agency their misconduct warrants substantial sanctions. The misconduct of respondents Pena and Rocca is aggravated by perjury and the subornation of perjury in their representation of a fellow respondent during the civil trial.
>
> [Id. at 233.]

Lowell, too, was guilty of subornation of perjury in the Marmon case. Although Lowell is not a recidivist, her misconduct occurred over several years, 1991 and 1995 through 1997. Moreover, her unethical actions involved several different cases, Korinis, Markert, Rapp, Marmon and Kennedy, as well as the billing of paralegal time as attorney time in the Hesse case and the improper signing of Ewing's name on a certification in the Cumins case.

In determining that Pena and Rocca should be disbarred, the Court found it important

that they had "steadfastly refused to admit their wrongdoing and to show any morsel of contrition. They persisted in their dishonesty, concealment, misrepresentation, and fraud, and in so doing, have demonstrated their contempt for the administration of justice." Id. at 234. Lowell, too, has demonstrated her contempt for the administration of justice. Furthermore, her actions evidence a deep strain of easy recourse to dishonest conduct. We are convinced that Lowell's pervasive pattern of deceit and deficiency of character warrant disbarment.

Based on the foregoing, we unanimously determined to recommend that Lowell be disbarred from the practice of law. We also unanimously determined that Vellekamp should be reprimanded. Two members recused themselves. One member did not participate.

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

Dated: 10/26/01

By: _____
ROCKY L. PETERSON
Chair
Disciplinary Review Board

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

In the Matter of Melinda Lowell
Docket No. DRB 01-041

Argued: June 21, 2001

Decided: January 2, 2002

Disposition: Disbar

| *Members* | *Disbar* | *Suspension* | *Reprimand* | *Admonition* | *Dismiss* | *Disqualified* | *Did not participate* |
|---|---|---|---|---|---|---|---|
| *Peterson* | X | | | | | | |
| *Maudsley* | X | | | | | | |
| *Boylan* | X | | | | | | |
| *Brody* | X | | | | | | |
| *Lolla* | X | | | | | | |
| *O'Shaughnessy* | | | | | | X | |
| *Pashman* | | | | | | X | |
| *Schwartz* | | | | | | | X |
| *Wissinger* | X | | | | | | |
| ***Total:*** | 6 | | | | | 2 | 1 |

Robyn M. Hill 1/9/02
Robyn M. Hill
Chief Counsel

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

In the Matter of Donna J. Vellakamp
Docket No. DRB 01-042

Argued: June 21, 2001

Decided: January 2, 2002

Disposition: Reprimand

| *Members* | *Disbar* | *Suspension* | *Reprimand* | *Admonition* | *Dismiss* | *Disqualified* | *Did not participate* |
|---|---|---|---|---|---|---|---|
| *Peterson* | | | X | | | | |
| *Maudsley* | | | X | | | | |
| *Boylan* | | | X | | | | |
| *Brody* | | | X | | | | |
| *Lolla* | | | X | | | | |
| *O'Shaughnessy* | | | | | | X | |
| *Pashman* | | | | | | X | |
| *Schwartz* | | | | | | | X |
| *Wissinger* | | | X | | | | |
| ***Total:*** | | | 6 | | | 2 | 1 |

Robyn M. Hill 1/9/02
Robyn M. Hill
Chief Counsel