SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 04-082

IN THE MATTER OF	:
JOHN N. GIORGI	:
AN ATTORNEY AT LAW	:

Decision

Argued: April 15, 2004

Decided: May 19, 2004

Michael J. Sweeney appeared on behalf of the Office of Attorney Ethics.

Laurie Esteves appeared on behalf of respondent.

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

This matter was before us based on a recommendation for discipline (three-month suspension) filed by Special Master Bernard A. Kuttner. The complaint charged respondent with

violations of RPC 1.5 (unreasonable fee), Rule 1:21-7 (excessive contingent fee), and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit, or misrepresentation) (count one); RPC 3.3(a)(1) (false statement of material fact to a tribunal), RPC 3.3(a)(5) (failure to disclose a material fact to a tribunal with knowledge that the tribunal may tend to be misled by such failure), RPC 3.4(b) (counsel or assist a witness to testify falsely), RPC 4.1(a) (false statement of material fact to a third person), RPC 8.4(a) (violate or attempt to violate the Rules of Professional Conduct through the acts of another), RPC 8.4(c), and RPC 8.4(d) (conduct prejudicial to the administration of justice) (count two); RPC 1.7(a) (conflict of interest), RPC 1.8(a) (prohibited transactions with a client), and RPC 1.8(e) (financial assistance to a client in connection with litigation) (count three); RPC 1.7 (a) and (b) and RPC 1.8(a) (count four); RPC 8.1(a) and (b) (misrepresentation to, and failure to cooperate with, disciplinary authorities) and RPC 8.4(a) and (c) (count five); and RPC 1.15(d) and Rule 1:21-6(c) (failure to comply with recordkeeping rules) (count six).

Respondent was admitted to the New Jersey bar in 1988. He has no disciplinary history.

The DiGeronimo Matter

Respondent was retained by his long-time friend, and the grievant, Thomas DiGeronimo, to represent him in a personal injury action shortly after he was involved in an automobile accident on July 28, 1995[1]. The parties entered into an undated contingent fee agreement, which provided that respondent's fee would be calculated based on the following formula: 33 ⅓% on the first $250,000 net recovery, 25% on the next $250,000 recovery, and 20% on the next $500,000 net recovery). This formula was in accordance with Rule 1:21-7 in effect on the date of the agreement.[2]

The litigation was settled in May or June 1998. In a settlement statement dated June 8, 1998, respondent stated that the contingent fee agreement allowed for a fee of one-third of the net figure of $538,395.28, or a fee of $179,465.09. This fee exceeded the schedule appearing in both the retainer agreement

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[1] Although DiGeronimo testified at the ethics hearing, his testimony was stricken upon his failure to appear for cross-examination.

[2] As of September 1996, the rule was amended to increase the maximum fee to 33 ⅓% on the first $500,000, 30% on the second $500,000, 25% on the third $500,000 and 20% on the fourth $500,000.

and Rule 1:21-7 in effect at the time of the agreement. Because respondent's maximum allowable fee was $153,512.39, he collected $25,952.70 in excess fees from DiGeronimo. Respondent admitted that, when he collected the fee, he was aware that it exceeded the amount allowable by both his retainer agreement and the court rule. As seen below, respondent took the excessive fee as partial interest in connection with loans that he had made to DiGeronimo.

Before the personal injury litigation was resolved, respondent had been engaged in settlement negotiations with Timothy Saia, the defendant's attorney. At the courthouse on the day of trial, respondent reduced his settlement demand from 1.2 million dollars to $750,000 and Saia increased his offer from $150,000 to $500,000. Although respondent then lowered his demand from $750,000 to $650,000, Saia told respondent that he had no authority to increase the $500,000 offer and was prepared to try the case. DiGeronimo asked respondent to try to obtain an additional $50,000. Respondent advised DiGeronimo that there was little likelihood that the offer would be increased because DiGeronimo had reduced his demand without any increase in the defendant's offer.

During an interview with the OAE on November 21, 2001, respondent explained that he fabricated a scheme in which he misrepresented to his adversary that, if the settlement offer were increased to $550,000, respondent would reduce his fee by $25,000:

> [S]o I said [to DiGeronimo] "This is what I'm gonna do. I'm gonna tell Tim [Saia] that the only way you'd even agree to take $550,000, the only way you agree to take $550,000 is if I were to reduce my fee by $25,000 to show him that I'm really trying to work on settling the case, . . ." To show Tim the reason why, the only reason I'm moving off of $650,000 is because I agree to $550,000 that I would take a reduction fee.
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> [T]hen [Tim Saia] came back to me and said, "I got the extra $50,000.00. I want you to know. They weren't going to give it to me, but I explained to the insurance company. Hey, listen, Mr. Giorgi's even trying to work. He's gonna reduce his fee."

In his reply to the grievance, respondent explained that he had no intention of reducing his fee:

> [DiGeronimo] knew my offer to reduce my fee was solely to induce Tim Saia to increase his settlement offer. He knew there was to be no actual reduction. . . . I explained all this to Mr. DiGeronimo and explained that I had to put on the record that I was planning to reduce my fee. I did not want to be professionally embarrassed if Tim Saia found out that I used the fee reduction "story" to obtain additional settlement funds. This was in light of how significant I felt it was in contribution to the settlement of the claim.

At the ethics hearing, respondent confirmed that he believed that his purported fee reduction was a "significant

factor" in successfully settling DiGeronimo's case and that Saia insisted on placing the terms of the settlement on the record. Respondent instructed DiGeronimo to testify that respondent had agreed to reduce his fee by $25,000. When the settlement was placed on the record, respondent represented to the judge that he was "conceding" part of his fee and elicited testimony from DiGeronimo to that effect.

As mentioned above, respondent extended to DiGeronimo several loans totaling $38,500. Specifically, respondent made the following loans to his client:

Date	Amount
11/10/95	$500
11/15/96	10,500
10/30/97	300
10/31/97	9,700
11/20/97	8,000
01/14/98	10,000

Respondent acknowledged, during the OAE interview on November 21, 2001, that he knew the loans were improper when he made them and that he had explained to DiGeronimo that "this obviously could get me in trouble with the bar association". In his reply to the grievance, respondent stated that he and DiGeronimo agreed that, instead of the graduated fee percentage required by the retainer agreement and the court rule,

respondent would take a fee of one-third of the full net recovery, in lieu of interest on the loans that he had made to his client. At the OAE interview, respondent stated that he wished to conceal the fact that he had charged his client interest on the loans:

> I didn't want it to appear on paperwork that I charged him interest, and I explained to [DiGeronimo] the reasons I didn't want it, because I figured if anyone ever reviewed this they would look at it and say, "Okay, yes, we understand that Giorgi shouldn't have loaned him money, but he did, but he didn't charge interest. So let's not take his livelihood from him because this is what he did." So it was agreed that the way I would collect my interest was to take a one, full 1/3 of his money, right.

Respondent also conceded that he did not disclose to DiGeronimo in writing the terms of the transactions, that he did not advise DiGeronimo to consult independent counsel, and that he did not obtain DiGeronimo's written consent to any of the loans.

In addition to the loans that respondent extended to DiGeronimo, he also arranged for another client, Gerlando Zambuto, to lend money to DiGeronimo. Respondent represented Zambuto in some business matters, as well as Zambuto's own personal injury matter. Zambuto was a chiropractor with an office in the same building as respondent's office. Although he

was not certain, respondent believed that he prepared the documents in connection with the loans from Zambuto to DiGeronimo. Because respondent did not maintain any records of these transactions, the dates of the Zambuto to DiGeronimo loans are unknown. Respondent also arranged for two loans of $10,000 each from another individual, Patricia Rufolo, to DiGeronimo.[3] The Zambuto loans were made after the last Rufolo loan. Because the last Rufolo loan was made on August 15, 1996, the Zambuto loans had to have been made after that date.

According to respondent, when the DiGeronimo settlement proceeds were disbursed, he instructed Zambuto to note on a document that the loan was canceled and gave the canceled document to DiGeronimo, stating that he "really felt uncomfortable the whole time being involved in this whole situation".

The complaint alleged that Zambuto made two loans of $10,000 each to DiGeronimo, for a total of $20,000. In his answer to the complaint, respondent stated that, although he did not recall the amounts of the loans, he believed the figures in the complaint to be accurate. Upon settlement of the DiGeronimo

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[3] Because Rufolo was not a client, respondent's arrangement of those loans did not result in the filing of ethics charges.

litigation, Zambuto received $20,000 for one of the loans, thus earning interest in the amount of $10,000.

Within three months of Zambuto's second loan to DiGeronimo, Zambuto told respondent that he needed the money repaid immediately. Using his own funds, respondent satisfied DiGeronimo's second loan from Zambuto. At the November 21, 2001 OAE interview, respondent stated that he believed that the second Zambuto loan was between $12,000 and $14,000 and that, whatever the principal amount was, he paid Zambuto the same amount, without interest. At the ethics hearing, respondent testified that he paid Zambuto between $12,000 and $15,000 to satisfy DiGeronimo's loan. At the time of disbursement of the DiGeronimo settlement proceeds, respondent was repaid $20,000 for this loan, including interest of between $5,000 and $10,000.

In summary, respondent directly loaned DiGeronimo $38,500, and assumed Zambuto's loan of between $10,000 and $15,000, for a total of between $48,500 and $53,500, and received a total of $72,952.70 ($20,000 in repayment of the Zambuto loan; a loan repayment of $27,000; and the excess contingent fee of $25,952.70). The OAE contended that these transactions were not fair and reasonable to DiGeronimo.

For his part, respondent admitted most of the allegations of the complaint. Although respondent acknowledged that he had charged DiGeronimo an excessive contingent fee, he contended that his client had agreed to pay the higher fee as partial interest on the loans that respondent had made to him. Respondent also pointed out that on December 13, 2001, he sent his attorney a check for $26,000 to be disbursed to DiGeronimo as restitution for the excessive contingent fee. The repayment was made after the grievance had been filed.

Respondent also admitted that he had misrepresented to his adversary, Saia, that he had agreed to lower his fee by $25,000 to induce Saia to increase his offer and that the misrepresentation had played a substantial part in resolving the litigation. Respondent, however, argued that, during settlement negotiations, attorneys often misrepresent to their adversaries the amounts of their final demands or offers as a method of "posturing".

Although respondent acknowledged that misrepresenting facts to a court is serious, he contended that, in this case, the court did not rely on the accuracy of his statement. He stated that, after he misrepresented to Saia that he had agreed to reduce his fee, Saia insisted that the settlement be placed on

the record. At this point, respondent was faced with the dilemma of revealing the misrepresentation to Saia, thereby damaging his credibility, or proceeding on the record. Respondent conceded that he had exercised poor judgment by misrepresenting, on the record, the terms of the settlement.

Respondent further admitted that he had loaned money to DiGeronimo and that he had not advised his client to seek the advice of independent counsel in connection with those transactions. Laurie Rizzo, respondent's sister, who worked in his office, testified that DiGeronimo would often appear at respondent's office, refusing to leave until respondent lent him money. Respondent confirmed that, while the personal injury matter was pending, DiGeronimo began to demand money and suggested that if respondent did not lend him money, DiGeronimo would accept any offer of settlement from the defendant.

In his reply to the grievance, respondent described the circumstances of the loans:

> I truly was conflicted. On one hand I had someone who I had known for years, who I truly believed was a victim of circumstances and I truly believed was a close friend. Tom had been here all day at my office begging me to help him out of his situation. He insisted that I either contact the defense attorney and settle for whatever they offered or loan him the money. You must keep in mind that at this point in time there was no offer on the file. My experiance

> [sic] is that on the big cases the defense carriers play it very close to the vest. There was no offer. To call at this stage and demand whatever they would offer would raise a more serious ethical issue in my opinion.
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> I am ashamed to say that I did not have the money and there was no one else to turn to. Tom had spent the entire day in my office. He played on my emotions and my loyalty as a friend. I finally agreed to take a cash advance on one of my credit cards to help him out. I paid back the loan on my credit card along with all the interest and charges.
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> It did not ever enter my mind that the same person who professed to be such a good friend and in such desperate need would ever in a million years turn against the person who helped him the most when he needed it the most.
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> I made several similiar [sic] loans to Mr. Digeronimo [sic] since the initial loan. Once again, in my mind I was loaning money to a long-time friend. I understand that he was also a client, but simply being a client would never, under any circumstances, be enough for me to provide financial loans to anyone. Tom was a friend first, a client second.

With respect to the loans from Zambuto to DiGeronimo, respondent contended that he had advised DiGeronimo that Zambuto was also a client. Respondent claimed that, although he did not perceive a conflict of interest in arranging for the loans and preparing the loan documents, he disclosed to DiGeronimo that he also represented Zambuto because it just happened to arise in a conversation. He also testified that he was not certain whether

Zambuto made two or three loans to DiGeronimo and that he did not have records of these transactions.

Respondent claimed that the loan interest that DiGeronimo paid to both himself and to Zambuto was reasonable, because companies that advance funds and obtain liens on personal injury recoveries charge interest of fifteen percent per month. He also argued that, because the record did not reveal exactly the amount of money repaid to him for the loans to DiGeronimo, there was no clear and convincing evidence that the amount of interest charged was unreasonable. In turn, the OAE contended that respondent received $52,952.70 from DiGeronimo's settlement proceeds in repayment for the loans, that he loaned DiGeronimo $38,500, and that the $14,452.70 in interest that respondent earned was exorbitant. The OAE further argued that respondent's failure to maintain the records of these loan transactions compounded his misconduct in making the improper loans.

In mitigation, respondent contended that his friendship with DiGeronimo clouded his judgment. Respondent stated that, after DiGeronimo's case had been settled, DiGeronimo attended respondent's wedding in April 1999, and that the two played golf and socialized. According to respondent, DiGeronimo did not file a grievance until January 2001, two and one-half years after the

settlement proceeds were disbursed. Respondent argued that DiGeronimo filed the grievance as leverage for a civil action that he had filed against respondent.

The Soni Matter

Respondent was retained by grievant Vikas Soni in connection with two motor vehicle accidents that occurred on October 25, 1997 and February 13, 1998. Although Soni filed a grievance complaining about the manner in which respondent disbursed the settlement proceeds, the investigation did not reveal any impropriety in that regard.

When Soni retained respondent, Soni indicated that he did not own a motor vehicle and did not reside with anyone who owned a motor vehicle. According to respondent, uninsured passengers are afforded the "zero tort threshold," while the tort threshold for insured passengers is dependent upon the provision in the insurance policy.

Soni executed three affidavits in which he represented that neither he nor a member of his household owned a motor vehicle. As a result, State Farm Insurance Company, the company that insured the vehicle in which Soni had been a passenger, was responsible for Soni's medical bills arising from his injury.

After respondent settled the personal injury cases, he filed a claim for personal injury protection ("PIP") benefits. Respondent claimed that he then discovered that, at the time of the accidents, Soni had resided in a college dormitory and that he had been covered by his mother's insurance policy issued by New Jersey Manufacturers.

In his reply to Soni's grievance, respondent accused Soni of committing insurance fraud:

> Since Mr. Soni represented that he did not reside with any household member that owned a car, all of Dr. Zambuto's[4] bills were sent to State Farm Insurance Company. . . . Also, this office argued in the liability case that he had the zero tort threshold and that he was entitled to payment on the claim . . . . So when it was to his benefit to claim he had the zero threshold afforded by the "Affidavit of No Insurance," he was agreeable with the concept. However, when he wanted his medical bills paid and learned out that his misrepresentation (In fact, he committed Insurance Fraud on two occasions by executing the Affidivats [sic]. . . look at the bottom of the State Farm form), I was left with no choice but to satisfy the Doctor's lien out of settlement.
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> . . . .
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> To add insult to injury, this office obtained a copy of the declaration page of Promila Soni, Vikas Soni's Mother. Not only did he lie about not residing with any one who owned a car, he lied about not having any insurance policy, at all, at the time of the accident.

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[4] Soni had been treated by Zambuto, the chiropractor with an office in the same building as respondent's law office.

> He is listed as an insured on the actual policy. I have circled his name, as I am not sure that you would know where to look.

Although respondent claimed that he had attached to his reply a copy of the declaration page, the document was actually a copy of the form by which New Jersey Manufacturers acknowledged the claim filed by Soni. By subpoena, the OAE obtained a copy of the declaration page for Promila Soni's insurance policy, which does not list Soni as an insured.

The OAE, thus, contended that respondent misrepresented that the claim acknowledgement form was a declaration page and that respondent accused Soni of committing insurance fraud in order to discredit Soni's grievance.

In his answer to the complaint, respondent denied that he had intentionally misrepresented the nature of the form that he had attached to the reply to the grievance. At the ethics hearing, respondent insisted that Soni had filed false affidavits of no insurance and that New Jersey Manufacturers would have honored his claim if it had been timely submitted.

Recordkeeping Violations

The complaint alleged that respondent failed to maintain a running checkbook balance for his attorney trust account; failed

to perform quarterly reconciliations of his trust account; and failed to maintain portions of clients' case files reasonably necessary for a complete understanding of their financial transactions. At the November 21, 2001 OAE interview, respondent admitted these deficiencies.

In the DiGeronimo matter, the special master found that, by charging an excessive contingent fee, respondent violated Rule 1:21-7. He did not address the allegation that respondent violated RPC 1.5 or RPC 8.4(c).

With respect to respondent's misrepresentation to the court that he had agreed to reduce his fee by $25,000, the special master determined that respondent violated RPC 3.3(a)(1) and RPC 3.4(b) by involving his client in the deception. The special master did not specifically address the allegations that respondent violated RPC 3.3(a)(5), RPC 4.1(a), and RPC 8.4(a), (c), and (d). It is not clear whether the special master found that respondent made misrepresentations to his adversary. Although the special master remarked that "attorneys frequently engage in puffing, under stating their authority or over stating their demands. It is a recognized negotiation tactic in settlement conferences," he further stated that "[m]isrepresentation

to his adversary and the Court on the fee reduction does affect the Administration of Justice".

The special master found that, by arranging loans for DiGeronimo, respondent engaged in a conflict of interest. The special master did not specify whether this conduct violated RPC 1.7(a), RPC 1.8(a), or RPC 1.8(e). He did not address the loans that respondent made directly to DiGeronimo, but he determined that there was insufficient proof that respondent earned excessive profits from these loans.

In the Soni matter, the special master found that respondent misrepresented to the OAE that the claim acknowledgement form was a copy of the declaration page of the insurance policy, that the misrepresentation was designed to discredit Soni, and that the statement to the OAE that Soni had committed insurance fraud was false. Although the complaint charged that, in this regard, respondent violated RPC 8.1(a) and (b) and RPC 8.4(a) and (c), the special master did not specify which RPCs were violated.

Finally, the special master found that respondent violated recordkeeping rules and that he corrected the violations.

The special master recommended a three-month suspension.

Following a de novo review of the record, we are satisfied that the special master's finding that respondent's conduct was unethical is supported by clear and convincing evidence.

In the DiGeronimo matter, respondent admitted that he improperly charged a fee of one-third of the entire recovery, instead of calculating his fee as required by the court rule and by his retainer agreement. He, thus, received a fee of almost $26,000 more than the amount to which he was entitled. This excessive fee was not the result of a mistake. As discussed below, respondent claimed that he and DiGeronimo had agreed that respondent would take a higher fee as additional interest on loans that he had extended to his client. Respondent's violation of RPC 1.5 and Rule 1:21-7 was, thus, intentional.

The complaint charged that respondent's excessive fee also violated RPC 8.4(c). Because the evidence that DiGeronimo had agreed to the fee arrangement was not rebutted, we did not find that respondent engaged in dishonesty, fraud, deceit, or misrepresentation in this regard.

Respondent also admitted that he had misrepresented to his adversary, Saia, and to the court that he had agreed to lower his fee by $25,000 in order to induce the defendant to increase its settlement offer by $50,000. Respondent claimed that,

because he had previously lowered his settlement demand, he presumed that further reducing that figure would not result in an increase in the defendant's settlement offer. He believed that, if he could convince the insurance company that he was willing to reduce his fee, the insurer would increase its offer to settle the matter. Respondent was correct. According to respondent's testimony, Saia reported that the insurer would not increase its offer until he explained that respondent was willing to reduce his fee to achieve a settlement. Respondent also testified that his purported fee reduction was a "significant factor" in resolving the case.

Respondent compounded his misconduct when he repeated the misrepresentation to the court and instructed his client to participate in the misconduct. Respondent was apparently surprised when Saia insisted that the settlement be placed on the record. At that point, respondent had to choose between revealing his scheme to Saia or to extend the deception. Rather than risk "professional embarrassment," respondent opted to make misrepresentations to the court and instructed his client to falsely testify that he had agreed to reduce his fee. Respondent's misstatements to his adversary in court violated RPC 3.3(a)(1), RPC 8.4(c), and RPC 8.4(d). By counseling his

client to testify falsely, respondent violated RPC 3.4(b) and RPC 8.4(a). Because respondent did not conceal facts, but made an affirmative misrepresentation to the court, we dismiss the charge that he violated RPC 3.3(a)(5) (failure to disclose a material fact to a tribunal). Similarly, we dismiss the charge that respondent made a false statement to a third person, in violation of RPC 4.1(a), because the misrepresentations were made to an adversary and to the court, in violation of RPC 8.4(c) and RPC 3.3(a)(1).

In addition, respondent acknowledged that he lent $38,500 to DiGeronimo and that, when he made those loans, he knew that his conduct was improper. Respondent also admitted that he extended another loan to his client by satisfying one of Zambuto's loans to DiGeronimo. Indeed, at the OAE interview of November 21, 2001, respondent admitted that, in the event that his actions were scrutinized, he did not want it to appear that he charged DiGeronimo interest. In respondent's view, his misconduct would appear to be less serious if he lent money to his client without charging interest. Respondent, therefore, increased his fee to one-third of the entire recovery, thereby receiving almost $26,000 more than the contingent fee rule permitted, in order to conceal the interest that he received.

At the ethics hearing, a significant amount of time was devoted to calculating the amount of interest that respondent received from DiGeronimo. Regardless of the amount of respondent's profit, there is no doubt that he violated RPC 1.8(a). That rule prohibits an attorney from entering into a business transaction with a client unless (1) the transaction and the terms are fair and reasonable and fully disclosed in writing to the client; (2) the client is advised to seek independent counsel; and (3) the client consents in writing. It is undisputed that respondent did not disclose the terms of the loan in writing, advise DiGeronimo to seek independent counsel, and obtain DiGeronimo's written consent to the loans. There is no doubt, therefore, that respondent violated RPC 1.8(a).

We consider, as an aggravating factor, that the transaction was neither fair nor reasonable to the client. The record reveals that, between November 10, 1995 and January 14, 1998, respondent loaned DiGeronimo a total of $38,500. The bulk of these loans, $28,000, was made no more than eight months before the litigation was settled on June 9, 1998. Upon settlement, respondent received $27,000, plus the excess contingent fee of $25,952.70, for a total of $52,952.70. In our view, respondent's excessive earnings of $14,452.70 on a loan of $38,500 are an

aggravating factor. Because the date and amount of the loan that respondent assumed from Zambuto could not be established, we could not analyze that transaction for fairness.

By lending money to his client without following the required safeguards, respondent violated RPC 1.8(a). Because respondent made these loans in connection with pending litigation, he also violated RPC 1.8(e). The complaint charged that respondent's loans to DiGeronimo also violated RPC 1.7(a) and (b). Because those RPCs do not apply to the loans from respondent to DiGeronimo, we dismiss those charges.

We also find that respondent violated RPC 1.7(a) and (b), when he arranged for the loans from one client, Zambuto, to another client, DiGeronimo. Respondent claimed that he had informed DiGeronimo that he also represented Zambuto. RPC 1.7 requires much more, however, before an attorney may engage in multiple representation. RPC 1.7(a) and (b) require that the attorney make a full disclosure of the circumstances to the client and obtain the client's consent. The attorney must also reasonably believe that the representation of one client will not be adversely affected by the attorney's responsibilities to another client or by the attorney's own interests.

Here, respondent conceded that, because he did not perceive a conflict of interest, he merely informed DiGeronimo that Zambuto was also a client because it happened to come up in a conversation. Respondent, thus, did not disclose to DiGeronimo the circumstances of the multiple representation. Moreover, respondent could not have reasonably believed that he could represent both the debtor and creditor in a loan transaction without his representation being materially limited. Similarly, once respondent stepped into Zambuto's shoes with regard to one of the Zambuto to DiGeronimo loans, respondent could not have reasonably believed that his representation of DiGeronimo was not materially limited by his own interests. Furthermore, the terms of the loan were favorable to Zambuto, to DiGeronimo's detriment. DiGeronimo borrowed $10,000 from Zambuto and repaid $20,000. Respondent, thus, violated RPC 1.7(a) and (b) and RPC 1.8(a) by representing both Zambuto and DiGeronimo in the loan transactions and by acquiring an interest in one of the loans.

In the Soni matter, the grievant complained about respondent's handling of two personal injury matters. Although the investigation disclosed no unethical conduct, the complaint alleged that respondent made misrepresentations in his reply to the grievance. In that reply, respondent contended that Soni had

committed insurance fraud by submitting false affidavits of no insurance, when he was a named insured under his mother's insurance policy. To bolster his allegation, respondent sent to the OAE a copy of a claim acknowledgement form, misrepresenting it to be a copy of the declaration page of the insurance policy. In fact, Soni was not a named insured under his mother's insurance policy, and no evidence was produced indicating that Soni would have been covered as a member of his mother's household.

Respondent's misrepresentations to the OAE about his client's purported insurance fraud and about the insurance documents that he submitted violated RPC 8.1(a) and RPC 8.4(c). Because the record does not contain clear and convincing evidence that respondent assisted Soni in committing insurance fraud, we dismiss the charge of a violation of RPC 8.4(a). In addition, we dismiss the charge that respondent violated RPC 8.1(b), because there is no clear and convincing evidence that he failed to disclose a fact necessary to correct a misapprehension or that he failed to cooperate with disciplinary authorities.

Finally, respondent acknowledged that he failed to maintain a running balance in his attorney trust account checkbook,

failed to perform quarterly trust account reconciliations, and failed to maintain required records in connection with the DiGeronimo loans.

In sum, respondent charged an excessive contingent fee, made misrepresentations to his adversary and to the court, counseled his client to make misrepresentations to the court, made loans to his client without complying with the required safeguards, engaged in a conflict of interest by arranging for one client to lend money to another client, made misrepresentations to the OAE, and violated the recordkeeping rules.

In cases involving lack of candor to a tribunal, although suspensions are the most frequent sanctions, the range of discipline is wide. See, e.g., In the Matter of Robin K. Lord, DRB 01-250 (2001) (admonition where the attorney failed to reveal her client's real name to a municipal court judge when her client appeared in court using an alias, thus resulting in a lower sentence because the court was not aware of the client's significant history of motor vehicle infractions; in mitigation, the attorney disclosed her client's real name to the municipal court the day after the court appearance, whereupon the sentence was vacated); In re Whitmore, 117 N.J. 472 (1990) (reprimand

where a municipal prosecutor failed to disclose to the court that a police officer whose testimony was critical to the prosecution of a charge of driving while intoxicated intentionally left the courtroom before the case was called, resulting in the dismissal of the charge; attorney did not have an improper motive and "may not have clearly seen the distinct line that must be drawn between his obligations to the court and his commitment to the State, on the one hand, and, on the other, his feelings of loyalty and respect for the police officers with whom he deals on a regular basis." Id. at 480); In re Norton and Kress, 128 N.J. 520 (1992) (both the prosecutor and defense counsel were suspended for three months for permitting the dismissal of a charge of driving while intoxicated; although the attorneys represented to the municipal court that the arresting officer did not wish to proceed with the case, they failed to disclose that the reason for the dismissal was the officer's desire to give a "break" to someone who supported law enforcement); In re Kernan, 118 N.J. 361 (1990) (attorney received a three-month suspension for failure to inform the court, in his own matrimonial matter, that he had transferred property to his mother for no consideration, and failure to amend his certification listing his assets; attorney had a prior

private reprimand); In re Forrest, 158 N.J. 429 (1999) (attorney suspended for six months for failure to disclose the death of his client to the court, to his adversary and to an arbitrator; the attorney's motive was to obtain a personal injury settlement); In re Telson, 138 N.J. 47 (1994) (attorney suspended for six months after he concealed a judge's docket entry dismissing his client's divorce complaint, obtained a divorce judgment from another judge without disclosing that the first judge had denied the request, and denied his conduct to a third judge, only to admit to this judge one week later that he had lied because he was scared); In re Cillo, 155 N.J. 599 (1998) (one-year suspension where, after misrepresenting to a judge that a case had been settled and that no other attorney would be appearing for a conference, the attorney obtained a judge's signature on an order dismissing the action and disbursing all escrow funds to his client; attorney knew that at least one other lawyer would be appearing at the conference and that a trust agreement required that at least $500,000 of the escrow funds remain in reserve); In re Kornreich, 149 N.J. 346 (1997) (three-year suspension where attorney, who had been in an automobile accident, misrepresented to the police, her lawyer, and a municipal court judge that her babysitter had been

operating her vehicle and presented false evidence in an attempt to falsely accuse another of her own wrongdoing; two members of the Court voted for disbarment).

Generally, in cases involving a conflict of interest, without more, and absent egregious circumstances or serious economic injury to clients, a reprimand constitutes appropriate discipline. In re Berkowitz, 136 N.J. 134 (1994); In re Guidone, 139 N.J. 272 (1994). Where the conflict of interest causes serious economic injury or the circumstances are more egregious, terms of suspension have been imposed. See, e.g., In re Hilbreth, 149 N.J. 87 (1997) (three-month suspension imposed where the attorney secured loans from a client to himself and brokered loans from that client to other clients without making the disclosures required by RPC 1.8(a) regarding business transactions with clients); In re Hurd, 69 N.J. 316 (1976) (three-month suspension for attorney who advised his client to transfer property title to attorney's sister for twenty percent of the property's value); In re Shelly, 140 N.J. 501 (1995) (six-month suspension for attorney who borrowed funds from his client without advising her to seek independent legal counsel and failed to keep his attorney records in accordance with Rule 1:21-6); In re Dato, 130 N.J. 400 (1992) (one-year suspension

for attorney who represented both parties in a real estate transaction, purchased property from a client for substantially less than its actual value, and resold it ten days later for a $52,500 profit); In re Griffin, 121 N.J. 245 (1990) (one-year suspension for attorney who entered into a business transaction with a client who was unable to manage her affairs properly; the attorney did not fully disclose to the client the consequences of the transactions or advise her to seek independent counsel); In re Humen, 123 N.J. 289 (1991) (two-year suspension for attorney who engaged in numerous sensitive business transactions with his client; the attorney concealed his adverse pecuniary interest from the client); In re Harris, 115 N.J. 181 (1989) (two-year suspension for attorney who induced his client to lend large sums to another client of whom the attorney was a creditor, without informing the first client of the financial difficulties of the borrowing client).

Moreover, either a reprimand or an admonition usually is imposed when an attorney charges an unreasonable or excessive fee. See, e.g., In the Matter of Robert S. Ellenport, Docket No. 96-386 (June 11, 1997) (admonition for attorney who received a fee of $500 in excess of the contingent fee permitted by Rule 1:21-7(c), in violation of RPC 1.5(a) (unreasonable fee) and RPC

1.5(c) (improper contingent fee)); In the Matter of Angelo Bisceglie, Jr., Docket No. 98-129 (September 24, 1998) (admonition for attorney who billed the Plainfield Board of Education for work not authorized by the full Board, although it was authorized by its president; the fee charged was unreasonable, but did not reach the level of overreaching; attorney also violated RPC 1.5(b), by failing to communicate to the Board, in writing, the basis or the rate of his fee, before or within a reasonable time after the beginning of the representation); In re Read, 170 N.J. 319 (2001) (reprimand for attorney who, in one matter, collected almost $100,000 in fees, when $15,000 would have been reasonable, and, in another mater, overcharged the estate by $85,000; in an effort to legitimize his exorbitant fee, the attorney presented inflated time records to the estate; compelling mitigating factors were considered); and In re Hinnant, 121 N.J. 395 (1990) (reprimand for attorney who overreached his client by attempting to collect $21,000 in fees for his representation in a $91,000 real estate transaction; the attorney was also found guilty of conflict of interest, by acting in multiple and incompatible capacities as attorney, consultant, negotiator, and real estate broker).

In addition to the above violations, respondent made misrepresentations to the OAE and failed to maintain required records.

In mitigation, respondent has a prior unblemished history. Although he advanced as a mitigating factor his reimbursement of the excessive fee that he charged DiGeronimo, he failed to make restitution until approximately three and one-half years after he received the excessive fee and then only after the filing of the grievance.

The primary mitigating factor here was respondent's long-term friendship with DiGeronimo. Respondent claimed that the relationship clouded his judgment and that he would never have lent funds to DiGeronimo if he had been only a client and not a friend. Although respondent's argument may apply to the loans, it does not serve to mitigate his acts of dishonesty – his attempt to conceal the improper loans by failing to prepare loan documents and by charging an excessive fee to hide the interest generated by the loans; his misrepresentation to his adversary and to the court; his counseling his client to give false testimony; and his misrepresentations to the OAE in the Soni matter. Although sympathy may be generated by the fact that apparently DiGeronimo took advantage of his friendship with

respondent, aggravating factors to be considered include respondent's pattern of dishonesty, as well as the unfairness of the loan transactions between respondent and his client.

The OAE recommended that respondent be suspended for one year, while respondent urged a reprimand. We find that respondent's acts of dishonesty require a suspension. For respondent's infractions, we unanimously determine that a suspension of three months constitutes appropriate discipline. Two members did not participate.

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

Disciplinary Review Board
Mary J. Maudsley, Chair

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