SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 15-420
District Docket No. XIV-2013-0607E

IN THE MATTER OF

FRANK A. LOUIS

AN ATTORNEY AT LAW

Decision

Argued: May 19, 2016

Decided: September 14, 2016

HoeChin Kim appeared on behalf of the Office of Attorney Ethics.

Justin P. Walder 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 on a disciplinary stipulation between respondent and the Office of Attorney Ethics (OAE). The OAE requests the imposition of a three-month suspension for respondent's stipulated violations of RPC 1.7(a)(2) (conflict of interest), RPC 8.4(b) (criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects), RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation), and RPC 8.4(d) (conduct

prejudicial to the administration of justice). Respondent, through counsel, requests either a suspended suspension or a reprimand with community service. We determined to impose a censure.

Respondent was admitted to the New Jersey bar in 1973. At the relevant times, he was a partner in the Toms River law firm of Louis and Judge. He has no disciplinary history.

The facts are taken from the parties' stipulation, dated December 22, 2015.

Respondent is an experienced family law attorney, whose practice is focused in Monmouth and Ocean counties. In May 2012, he was involved in an unspecified "conflict" with two of the four Ocean County Family Part judges. Consequently, he could appear only before an unidentified judge and the Honorable Melanie D. Appleby, J.S.C. At the time, respondent was counsel of record in two pending matrimonial cases assigned to Judge Appleby.

On May 3, 2012, Judge Appleby's former husband, Christopher Donohue, wrote a letter to her, seeking to terminate his support of their son, whose graduation from college was imminent. On May 7, 2012, Judge Appleby's secretary, who knew respondent through their longtime interaction in the courthouse, contacted him to

request that he meet with the judge in her chambers about Donohue's letter.[1]

The next day, respondent met with Judge Appleby in her chambers, at which time she gave him a copy of Donohue's May 3, 2012 letter. Respondent replied that he did not want to be placed on the judge's disqualification list, and, therefore, he would find another attorney to represent her.

Sometime after respondent's meeting with Judge Appleby, he telephoned Mark Biel, an Atlantic County family law attorney, and asked Biel whether he would represent the judge. Although Biel was non-committal about the representation, at respondent's request, he sent respondent a piece of his letterhead for respondent to draft an initial letter for Biel, in the event that Biel agreed to represent the judge.

As of June 19, 2012, Biel had had no further communication with respondent, and he had not contacted Judge Appleby to establish an attorney-client relationship. On that same date,

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[1] The stipulation does not state whether the secretary called respondent of her own volition or whether Judge Appleby had requested her to do so. In the disciplinary matter instituted against Judge Appleby, the Advisory Committee on Judicial Conduct issued a presentment reciting that the parties stipulated that Judge Appleby had instructed her secretary to contact respondent. In the Matter of Melanie D. Appleby, Docket No. ACJC 2013-037 (September 9, 2014) (op. at 6) (the Appleby proceeding).

respondent appeared before the judge in the matter captioned Cornick v. Cornick.[2]

Two days later, on June 21, 2012, respondent, through his staff, e-mailed to Judge Appleby, for her review, a letter he had drafted in reply to Donohue's May 2012 letter. The phrase "BIEL LETTERHEAD" appeared in boldface type at the top of the first page of the five-page letter.

On June 22, 2012, Judge Appleby made edits to the letter and e-mailed the marked-up version to respondent, whose secretary incorporated the judge's changes. On June 26, 2012, the letter to Donohue was printed on Biel's letterhead. Biel did not sign the letter, however. Instead, respondent signed Biel's name and sent it to Donohue, with a courtesy copy to Judge Appleby.

Prior to mailing the letter to Donohue, respondent did not provide Biel with a copy of the letter. Moreover, respondent never informed Biel that he would be sending the letter, and he

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[2] Respondent claims that the Cornick matter was an uncontested divorce. However, in the Appleby proceeding, the ACJC noted that, in the Cornick matter, the judge heard from the parties' attorneys, received testimony from the parties regarding the terms of the settlement agreement, and entered a final judgment of divorce. In the Matter of Melanie D. Appleby, supra, at 9 n.4.

never obtained Biel's authority to sign Biel's name to the writing.

On July 17, 2012, respondent appeared before Judge Appleby in the matter captioned Kelly v. Kelly.[3] As of that date, Biel still had not contacted the judge to establish an attorney-client relationship with her.

On a date not identified in the stipulation, Donohue retained attorney Catherine Tambasco to assist him in replying to the Biel letter. On July 18, 2012, Tambasco telephoned Biel, who told her that he did not represent the judge and, further, he "did not know what she was referencing." At Biel's request, Tambasco faxed him a copy of the June 26, 2012 letter, together with a copy of the parties' consent order, presumably entered in their matrimonial action. It was at this time that Biel first learned that respondent had signed his name, without his authority, to the letter written on Judge Appleby's behalf.

On July 19, 2012, Biel wrote to respondent and informed him of Tambasco's call. Biel stated that, although he would

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[3] Respondent claims, in this proceeding, that the Kelly case also was an uncontested divorce. Yet, in the Appleby proceeding, the ACJC observed that the parties had stipulated that the Kelly case involved "complex issues related, in part, to defendant's medical records and personnel file, which required [Judge Appleby] to enter both consent and protective orders between July 17, 2012 and July 20, 2012." In the Matter of Melanie D. Appleby, supra, at 12 n.5.

"continue to help," he did not "feel overly comfortable with this process."

The next day, Judge Appleby entered certain orders in the Kelly matter.[4]

On August 13, 2012, respondent formally advised Tambasco, in writing, that he "will be representing" Judge Appleby in the Donohue matter. The next day, he advised his adversary in the Kelly matter that his office was in conflict with Judge Appleby. For her part, Judge Appleby waited until September 4, 2012 to advise the assignment judge that she had a conflict with respondent and requested that he be added to her disqualification list.

Based on the above facts, the parties stipulated to the following RPC violations:

> RPC 1.7(a)(2) - in that respondent engaged in a concurrent conflict of interest when he represented two matrimonial clients before the Hon. Melanie J. [sic] Appleby, J.S.C. whom he was assisting;
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> RPC 8.4(b) - in that respondent committed a criminal act that reflects adversely on his honesty, trustworthiness or fitness as a lawyer in other respects when he forged Biel's signature on the June 26, 2012, letter sent on behalf of Judge Appleby;

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[4] See fn. 4, supra, at 5.

> RPC 8.4(c) - in that respondent engaged in conduct involving dishonesty, fraud, deceit or misrepresentation when he drafted a letter for Judge Appleby, obtained her comments/edits, placed that language on Biel's letterhead, signed Biel's name without his knowledge or consent, and sent that letter to Judge's [sic] Appleby's former husband; and
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> RPC 8.4(d) - in that respondent engaged in conduct prejudicial to the administration of justice when he failed to disclose his assistance of the judge to his opposing counsel in the Cornick matter and in the Kelly matter not [sic] until August 2012.
>
> [S¶26.]

In mitigation, respondent has practiced law, without incident, for more than forty years. As his certification reflects, he is a distinguished member of the family law bar and is clearly an expert in such matters, having been appointed to a number of commissions and committees charged with studying and making recommendations in the field of family law. He has served the Ocean County community as well, in non-legal matters. He has served both the bar and the family court in various capacities, establishing the Ocean County Early Settlement Program, in which he has been an active member, and developing, implementing, and participating in several notable CLE programs.

Although more reflective of a natural consequence of his unethical behavior than a mitigating factor, respondent has suffered professionally as a result of his misconduct. For

example, he was removed as the moderator of the annual Family Law Symposium, a position that he had held since 1996. A longstanding speaker for numerous CLE and State and county bar association programs, he has not been asked to participate since his misconduct became public. He is no longer invited to meet with the Director of the AOC, the Chief Justice, or any Superior Court assignment or presiding judges, as he had in the past. Gann Books terminated its contract with him, which called for him to collaborate with a retired family part judge and another attorney on a series of books on the subject of family law.

Finally, respondent is well-respected by his peers, who have bestowed awards upon him for his contributions to the field. Many individuals (115 to be precise), mostly members of the bar, have submitted character letters on his behalf.

Following a review of the record, we are satisfied that the stipulation clearly and convincingly establishes that respondent's conduct was unethical.

With certain exceptions, RPC 1.7(a) prohibits an attorney from representing a client if the representation involves a concurrent conflict of interest. Under subparagraph (2), a concurrent conflict of interest exists if "there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to

another client, a former client, or a third person or by a personal interest of the lawyer."

In our view, because Judge Appleby was not an actual client of respondent, she falls within the "third person" category of the RPC. Moreover, given respondent's clandestine relationship with her, the "personal interest of the lawyer" category of the RPC also applies.

Although the relationship between respondent and Judge Appleby might operate to his clients' benefit, there also was "a significant risk" that the representation of his clients would be "materially limited" by his responsibilities to the judge (as her covert advocate in her personal matter) and by his personal interest (to serve her well). Suppose, for example, that Judge Appleby ruled against respondent's client in one of the two matters before her. Certainly, there would be a "significant risk" that, because of respondent's loyalty to the judge, he would counsel his client against appealing the adverse determination. That respondent would never do such a thing is irrelevent, as the RPC turns on a "significant risk," without consideration of what ultimately may have happened.

Further, respondent's conduct falls squarely within RPC 8.4(d), which prohibits conduct prejudicial to the administration of justice. Certainly the administration of

justice is prejudiced by an undisclosed personal relationship between a judge and an attorney with pending matters before her, regardless of any material impact that relationship may or may not have on the representation. Thus, as stipulated, respondent's non-disclosure of his relationship with the judge violated RPC 8.4(d).

RPC 8.4(c) proscribes conduct involving dishonesty, fraud, deceit or misrepresentation. Respondent violated this rule when he drafted a letter on Biel's letterhead and signed Biel's name, without Biel's authorization or knowledge.

Finally, by forging Biel's signature on a letter purportedly authored and sent by him, respondent violated RPC 8.4(b). N.J.S.A. 2C:21-1a (emphasis added) provides, in pertinent part:

> a. Forgery. A person is guilty of forgery if, with purpose to defraud or injure anyone, or with knowledge that he is facilitating a fraud or injury to be perpetrated by anyone, the actor:
>
> . . . .
>
> (2) Makes, completes, executes, authenticates, issues or transfers any writing so that it purports to be the act of another who did not authorize that act or of a fictitious person, or to have been executed at a time or place or in a numbered sequence other than was in fact the case, or to be a copy of an original when no such original existed; or

> (3) Utters any writing which he knows to be forged in a manner specified in paragraph (1) or (2).

It matters not that respondent was neither charged with nor convicted of the crime. In re Gallo, 178 N.J. 115, 121 (2003) (the scope of disciplinary review is not restricted, even though the attorney was neither charged with nor convicted of a crime). A violation of RPC 8.4(b) may be found even in the absence of a criminal conviction or guilty plea. See, e.g., In re McEnroe, 172 N.J. 324 (2002).

To conclude, as stipulated, respondent violated RPC 1.7(a)(2) and RPC 8.4(d) by privately advising Judge Appleby regarding her own post-judgment matrimonial issue while he had two matters pending before her and by failing to disclose that relationship to his adversaries in the pending matters. Further, he violated RPC 8.4(b), (c), and (d) when he drafted a letter on Biel's letterhead and forged Biel's signature, without Biel's knowledge or consent, and sent it to Judge Appleby's former husband.[5]

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

[5] We reject counsel's attempt to minimize the seriousness of his client's misconduct, including counsel's assertion that respondent intended "no great deception" by his actions.

1.7(a)(2) and RPC 8.4(b), (c), and (d). As the parties have pointed out, there is no case directly on point.

At a minimum, a conflict of interest and a misrepresentation each requires the imposition of a reprimand. See, e.g., In re Berkowitz, 136 N.J. 134, 148 (1994) (conflict of interest); In re Kasdan, 115 N.J. 472, 488 (1989) (misrepresentation to client); and In re Walcott, 217 N.J. 367 (2014) (misrepresentation to third party). If, however, the conflict involves "egregious circumstances," discipline greater than a reprimand is warranted. Berkowitz, supra, 136 N.J. at 148.

Conduct prejudicial to the administration of justice typically results in either a reprimand or a censure, depending on other factors present, including the existence of other violations, the attorney's ethics history, whether the matter proceeded as a default, the harm to others, and mitigating or aggravating factors. In this case, we rely on In re DeClemente, 201 N.J. 4 (2010), and In re Welaj, 170 N.J. 408 (2002), which involve facts most similar to those stipulated in this case.

In Welaj, the attorney received a three-month suspension for representing more than 120 criminal defendants in Somerset County while his former law partner, Nicholas Bissell, served as

the county prosecutor.[6] In the Matter of William P. Welaj, Docket No. DRB 00-374 (July 29, 2001) (slip op. at 4). At the same time, Welaj engaged in several business ventures with the prosecutor, which were concealed through the use of trust agreements. Id. at 4-7.

We found violations of RPC 1.7(b) and (c), RPC 8.4(a), and RPC 8.4(d). Id. at 12-14. In particular, we determined that Welaj had violated RPC 8.4(d) because he had "assisted the prosecutor in violating ethics rules." Id. at 14. In choosing to suspend Welaj, we noted that, on the one hand, his conduct had subverted the administration of justice. Id. at 16. On the other hand, we cited the "significant negative consequences" suffered by Welaj as the result of his involvement with Bissell, including the loss of his position as managing partner of their former law firm. Id. at 17. Thus, in the absence of this mitigation, the suspension would have been greater.

In DeClemente, the attorney received a three-month suspension for multiple acts of misconduct. First, he engaged in a conflict of interest and an improper business transaction by representing the buyers (of which he was one) and the seller in

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[6] Bissell was convicted of fraud, obstruction of justice, perjury, and income tax evasion. Id. at 2. Welaj was not charged, although he testified as a witness at Bissell's criminal trial. Ibid.

the purchase of a condominium for which he was also the lender. In the Matter of Thomas A. DeClemente, DRB 08-413 (August 25, 2009) (slip op. at 2, 44-48). Second, DeClemente made multiple misrepresentations to the buyers, including his failure to inform them that he, not a bank, was providing the financing. Id. at 48. That omission was bolstered by his misleading the other buyers into believing that a bank was the mortgagee. Id. at 49.

Third, DeClemente appeared in two related lawsuits on behalf of his own business entity, First England Funding, LLC, before a Superior Court judge who, at the time, was indebted on three loans made to him by relatives of DeClemente's wife. Id. at 3, 53-54. DeClemente had arranged the loans, which were made through First England Funding, LLC. Ibid. Neither DeClemente nor the judge had disclosed the loans to DeClemente's adversaries in the litigation. Id. at 2-3. The judge entered judgment in favor of the funding company in both cases. Ibid. We determined that respondent's failure to so inform his adversaries or to seek the judge's recusal violated RPC 8.4(c) and (d). Id. at 55.

We note that there are some differences between respondent's conduct and the conduct of Welaj and DeClemente. Unlike Welaj, respondent's improper conduct did not involve a substantial number of clients and multiple transactions with the

judge. Further, respondent's misconduct was not as pervasive as DeClemente's. Despite these differences, however, Welaj and DeClemente are fundamental to our determination that respondent should be censured for his misconduct.

The attorneys in Welaj and DeClemente engaged in a conflict of interest with a public official. In both cases, they failed to disclose the conflict to their adversaries. Like respondent, Welaj went a step further and concealed the conflict by entering into trust agreements. In this case, respondent concealed the conflict by tricking Biel into providing him with a piece of blank letterhead and then fabricating a letter purportedly written by Biel on that letterhead and forging Biel's signature.

It is of great significance to us that the discipline ultimately imposed on the attorneys in Welaj and DeClemente turned on the presence of mitigating factors. With respect to DeClemente, in particular, we noted that, were it not for his unblemished career of nearly forty years and the passage of time between the commission of the misconduct and the presentation of the matter before us, he would have received a six-month suspension. DeClemente, supra, DRB 08-413 at 61-62. Instead, he was suspended for three months. Ibid.

Given the high number of matters involved in Welaj and the additional ethics infractions involved in DeClemente, and the

fact that, in the absence of mitigation, those attorneys would have received a six-month suspension, it follows that a three-month suspension would be appropriate in this case. Yet, as in those matters, the mitigation weighing in respondent's favor is significant.

Respondent has practiced law, without incident, for more than forty years. He is a distinguished member of the family law bar and is clearly an expert in such matters, having been appointed to a number of commissions and committees charged with studying and making recommendations in the field of family law.

Further, respondent is well-respected by his peers, many of whom have submitted character letters on his behalf. His service to the community is longstanding and impressive.

Finally, although more reflective of a natural consequence of his unethical behavior than a mitigating factor, respondent has suffered professionally as a result of his misconduct, as detailed above.

Respondent's misconduct was egregious, but aberrational. Its consequences, for him, were devastating. Although, given the totality of his misconduct, a three-month suspension is justified, the adverse impact that has befallen him calls for tempering justice with mercy. Accordingly, we determined to impose a censure.

Member Gallipoli voted to impose a three-month suspension. Chair Frost and Member Hoberman were recused. Vice-Chair Baugh and Member Zmirich did not participate.

We further determine to require respondent to reimburse the Disciplinary Oversight Committee for administrative costs and actual expenses incurred in the prosecution of this matter, as provided in R. 1:20-17.

Disciplinary Review Board
Bruce W. Clark, Esq.

By: Ellen A. Brodsky
Ellen A. Brodsky
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Frank A. Louis
Docket No. DRB 15-420

Argued: May 19, 2016

Decided: September 14, 2016

Disposition: Censure

Members	Disbar	Three-month Suspension	Censure	Recused	Did not participate
Frost				X	
Baugh					X
Boyer			X		
Clark			X		
Gallipoli		X			
Hoberman				X	
Rivera			X		
Singer			X		
Zmirich					X
Total:		1	4	2	2

Ellen A. Brodsky
Chief Counsel