

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 16-139
District Docket No. XIV-2015-0181E

IN THE MATTER OF
SALVATORE DE LELLO
AN ATTORNEY AT LAW

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Corrected Decision

Argued: September 15, 2016

Decided: December 16, 2016

Jason Saunders appeared on behalf of the Office of Attorney Ethics.

Respondent waived his appearance for oral argument.

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

This matter was before us by way of a disciplinary stipulation between the Office of Attorney Ethics ("OAE") and respondent. Respondent admitted to violations of RPC 1.9(a) (conflict of interest); RPC 1.9(c)(1) (using information relating to the representation to the disadvantage of the former client); RPC 8.4(b) (criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in

other respects); and RPC 8.4(d) (conduct prejudicial to the administration of justice).

The OAE recommends a censure. We determined to impose a three-month suspension.

Respondent was admitted to the New Jersey bar in 1983.

In 2001, respondent was suspended for three years, retroactive to 1999, after he pleaded guilty to commercial bribery, breach of duty to act disinterestedly, forgery, falsifying records, and false swearing; violations of RPC 8.4(b) and RPC 8.4(c). In re De Lello, 167 N.J. 604 (2001). Respondent was reinstated in 2003.

On April 5, 2016, respondent and the OAE entered into a disciplinary stipulation. The facts are as follows:

On June 5, 2012, grievant, Richard Hone, retained respondent in connection with a civil rights matter involving claims against the Edison Police Department. On June 13, 2012, Richard further retained respondent to act on behalf of his mother, Catherine Hone, as power of attorney. Two days later, on June 15, 2012, respondent represented Richard and Catherine in connection with a guardianship matter. Soon thereafter, the relationship between Richard and respondent deteriorated. The representation was terminated in July 2012.

On September 18, 2012, respondent filed a civil complaint against Richard and Catherine to collect unpaid attorney's fees. At some point, Richard made various statements about respondent, resulting in respondent's filing of a defamation suit against both Richard and Catherine. On September 3, 2013, while the defamation suit was pending, Catherine passed away. Nine months later, on June 9, 2014, Judge Paley entered default judgement against the Estate of Catherine Hone (the Estate). On October 30, 2015, Judge Paley entered judgment against Richard.

About one year earlier, on October 6, 2014, respondent had filed a verified complaint against Richard and the Estate, on behalf of Nancy Hone, Richard's sister, alleging that Richard had violated his fiduciary duties. On December 11, 2014, respondent filed a second amended complaint.

Eventually, on December 31, 2014, Richard filed a motion to remove respondent as counsel for Nancy, due to a conflict of interest. On February 27, 2015, the Honorable Frank Ciuffani, J.S.C., ordered respondent to immediately cease his representation of Nancy. Notwithstanding that order, on March 2, 2015, respondent re-filed a lis pendens on behalf of Nancy and sent a copy to Richard. On March 19, 2015, respondent sent a letter to Jacob S. Elkes, Esq., on behalf of Nancy, alleging

that Richard's preparation of the deed for Catherine's home constituted the unauthorized practice of law and may be voided.

The relationship between Richard and respondent following the termination of the representation was characterized by significant animosity and distrust. Richard regularly threatened criminal charges against respondent, alleging that he failed to return funds owed. He frequently e-mailed respondent threatening further ethics grievances, criminal complaints, and civil litigation. On November 20, 2014, respondent e-mailed Richard, stating:

"What do you want to drop the criminal charges, stop defaming me, and stop harassing me and my family? I could pay the \$5,000.00 to you in cash and have the court return the \$7,500.00 held by the clerk of the court. I could give the money before we enter the court room tomorrow and then I will drop everything on the record in front of Judge Paley. Just tell me what you want to drop the criminal charges and leave me and my family alone."

[S122;Ex.10.]¹

Respondent initially explained to the OAE that his offer to pay Richard \$5,000 was in furtherance of a sting operation with

¹ "S" refers to the Stipulation entered into by respondent and the Office of Attorney Ethics.

the Piscataway Police Department in an attempt to catch Richard accepting the "bribe." The purported sting, however, was not coordinated with the Piscataway Police Department, or any other law enforcement agency. Rather, respondent simply offered to pay Richard \$5,000 in exchange for his dropping the criminal charges he had threatened to file, although there were, in fact, no criminal charges filed.

In aggravation, the OAE noted that respondent has a criminal history and a disciplinary history, and that he failed to remediate his conduct, despite multiple opportunities to do so. Specifically, respondent could have remediated his conduct regarding the conflict of interest by complying with the court's order; yet, he continued to represent the client. In mitigation, however, the OAE acknowledged that respondent's conduct was clearly not for personal gain, that it "was in response to provocation [albeit] not rising to the level of a defense" and that he readily admitted his misconduct.

In his mitigation statement, submitted with the stipulation, respondent detailed his relationship with Richard, which began with an unannounced visit to respondent's office after Richard had been released from prison, having served eighteen months for threatening New Jersey court personnel. Richard was quiet, respectful, and humble, and represented that

he had been wrongfully convicted because the Edison police had withheld evidence and that the prosecutor was aware of the wrongful conduct of the police. He also asserted that his mother, Catherine, was neglected by a court-appointed guardian, was abused, and was injured as a result of the negligence of the guardian, the hospital, and medical professionals. He wanted to file both a civil rights lawsuit in his own behalf and a malpractice action on his mother's behalf.

Respondent informed Richard that he did not handle those types of matters, and that he had limited time because of a complex trial that was scheduled to begin soon. Richard explained that he did not want respondent to represent them in court, but merely to help him get documents and evidence organized so that his team of New York lawyers could proceed. He estimated that no more than two weeks of respondent's time would be required.

Soon thereafter, respondent learned that Richard had been diagnosed with bi-polar disorder, suffers from alcohol and cocaine addiction, had five domestic violence final restraining orders entered against him since his most recent release from prison, and has a long criminal history dating back to 1990, with multiple convictions in New Jersey and New Mexico, as well as outstanding warrants in both New Jersey and Florida. Richard

served many short jail terms in addition to the most recent eighteen-month sentence. Respondent claims that, at the time of his writing, Richard was a fugitive hiding in Mexico but has access to e-mail and telephone service.

Respondent explained that his relationship with Richard rapidly deteriorated, such that if he did not promptly respond to every e-mail, Richard would call and waste time questioning why respondent had not commented on the human rights violations he had suffered or his \$10,000 donation to save big cats of Africa.

The relationship ended about one month after it started when, on a particular day, respondent offered to accomplish three tasks in exchange for Richard's agreement to stop calling and e-mailing respondent so that respondent could address other client issues. Eventually, though, Richard relentlessly filed ethics complaints, criminal complaints, and frivolous litigation, and harassed respondent's mother, son, and ex-wife via telephone calls and e-mails. In his telephone calls to respondent's eighty-year-old mother, Richard used foul language and threatened that he was coming after them, reducing her to tears. Although she was soon able to recognize Richard's voice and would terminate the telephone call as soon as he began

talking, Richard continued to harass her with late night phone calls.

Respondent and his ex-wife eventually had a family meeting to explain to their four children what was happening. He posted photos of Richard in both his and his ex-wife's home, instructing his family to call the police if they encountered Richard. Respondent believed that, based on Richard's history, he may have been approaching a violent stage, as he had repeatedly done in the past.

After Richard issued multiple subpoenas to respondent's mother, son, and ex-wife, respondent eventually obtained a court order declaring Richard's conduct as harassing and prohibiting him from issuing further subpoenas. Respondent noted that the attacks against his ex-wife, at her place of employment, were "particularly effective" and served to place immense personal and emotional pressure on respondent.

Respondent equated his experiences with Richard to those of the victims of domestic violence. He believed that the system had failed and the police could do nothing to prevent Richard from unleashing a violent attack against his family. When the focus of Richard's attacks changed from respondent to his family, he feared that he would be unable to prevent Richard from continuing his course of conduct by appealing to him in a

reasonable fashion. Respondent believed the only solution was the payment to Richard.

The stipulation contains sufficient evidence to support the finding that respondent's conduct was unethical. Respondent admitted violating RPC 1.9(a), RPC 1.9(c)(1), RPC 8.4(b), and RPC 8.4(d).

Respondent violated RPC 1.9(a) by representing Nancy in a lawsuit against his former client, Richard, without having obtained his consent, in writing. The stipulation also states, that respondent violated RPC 1.9(c)(1) by engaging in this conflict. That subsection imposes on an attorney a duty not to use information relating to the representation of a former client to the disadvantage of that former client. Although the record is clear that respondent engaged in a conflict of interest by representing Nancy, there are no other facts to support a finding that respondent used any information to the disadvantage of Richard or otherwise violated the attorney-client privilege. Therefore, we dismiss that violation.

Additionally, respondent engaged in witness tampering, a violation of N.J.S.A. 2C:28-5(5)(d), a crime in the second degree. That statute states that a person commits an offense if, believing that an official proceeding or investigation is pending or about to be instituted, the person knowingly engages

in conduct that would cause a witness to otherwise obstruct, delay, prevent, or impede an official proceeding. N.J.S.A. 2C:28-5(5). A person commits a crime of the second degree if he or she offers a witness any benefit in consideration therefor. N.J.S.A. 2C:28-5(5)(c).

By respondent's own words and admissions, he clearly attempted to induce Richard to either dismiss or refrain from filing criminal and civil charges he had brought or intended to bring. In fact, the crime occurred in two relatively short sentences sent in an e-mail from respondent to Richard: "What do you want to drop the criminal charges, stop defaming me, and stop harassing me and my family? I could pay the \$5,000.00 to you in cash and have the court return the \$7,500.00 held by the clerk of the court." By offering Richard \$5,000 in exchange for dropping criminal charges, respondent ran afoul of the witness tampering statute and, hence, violated RPC 8.4(b) and RPC 8.4(d).

In further violation of RPC 8.4(d), respondent knowingly disregarded the court's order of February 27, 2015, terminating his representation of Nancy, by filing a subsequent motion and sending a letter to another attorney on her behalf.

In sum, respondent has violated RPC 1.9(a), RPC 8.4(b), and RPC 8.4(d).

It is well-established that a reprimand is the measure of discipline imposed on an attorney who engages in a conflict of interest, absent egregious circumstances or serious injury to clients. In re Berkowitz, 136 N.J. 148 (1994). Accord In re Mott, 186 N.J. 367 (2006) (reprimand for conflict of interest imposed on attorney who prepared, on behalf of buyers, real estate agreements that provided for the purchase of title insurance from a title company that he owned; notwithstanding the disclosure of his interest in the company to the buyers, the attorney did not advise buyers of the desirability of seeking, or give them the opportunity to seek, independent counsel, and did not obtain a written waiver of the conflict of interest from them); and In re Poling, 184 N.J. 297 (2005) (reprimand imposed on attorney who engaged in conflict of interest when he prepared, on behalf of buyers, real estate agreements that pre-provided for the purchase of title insurance from a title company that he owned – a fact that he did not disclose to the buyers, in addition to his failure to disclose that title insurance could be purchased elsewhere).

If the conflict involves "egregious circumstances" or results in "serious economic injury to the clients involved," then discipline greater than a reprimand is warranted. In re Berkowitz, supra, 136 N.J. at 148. See also In re Guidone, 139

N.J. 272, 277 (1994) (attorney, who was a member of the Lions Club and represented the Club in the sale of a tract of land, engaged in a conflict of interest when he acquired, but failed to disclose to the Club, a financial interest in the entity that purchased the land, and then failed to (1) fully explain to the Club the various risks involved with the representation and (2) obtain the Club's consent to the representation; the attorney received a three-month suspension because the conflict of interest "was both pecuniary and undisclosed").

Berkowitz and its progeny also apply in cases involving conflicts of interest with former clients, in violation of RPC 1.9(a). See, e.g., In re Levine, 224 N.J. 441 (2016) (reprimand for attorney who represented the husband in the creation of a family trust and later, after his client had been divorced, gave legal advice to his client's former wife about the trust; attorney also improperly took several jurats); In re Dranov, 179 N.J. 420 (2004) (reprimand for attorney who embroiled himself in several conflict of interest situations (RPC 1.9(a)(1)), thereby compromising the interests of one client to the advantage of the other and breaching his duty of fidelity to both; the attorney asserted a claim of one client against a former client, without obtaining the former client's consent after full disclosure of the circumstances and consultation with the former client); In

re Frohling, 205 N.J. 6 (2011) (censure imposed on attorney who represented the buyers in a real estate transaction and then, when those buyers later sold the property, the attorney represented the new buyers in the purchase from his former clients; the attorney also was guilty of gross neglect, concurrent conflict of interest, failure to supervise a nonlawyer, and conduct involving dishonesty, fraud, deceit or misrepresentation; prior reprimand); and In re Mason, 197 N.J. 1 (2008) (censure for attorney who, with information gathered during the representation of Marx Toys, switched sides to represent a competing entity; he violated a subsequent court order, directing him to refrain from performing any legal work involving Marx Toys and from making any disclosures about Marx Toys; the attorney used information obtained in the course of his representation of Marx Toys; violations of RPC 1.9(a), RPC 1.9(c)(1), and RPC 8.4(d)).

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. See, e.g., In re Gellene, 203 N.J. 443 (2010) (reprimand for attorney found guilty of conduct

prejudicial to the administration of justice and knowingly disobeying an obligation under the rules of a tribunal for failing to appear on the return date of an appellate court's order to show cause and failing to notify the court that he would not appear; the attorney was also guilty of gross neglect, pattern of neglect, lack of diligence, and failure to communicate with clients; mitigating factors considered were the attorney's financial problems, his battle with depression and significant family problems; his ethics history included two private reprimands and an admonition); In re Geller, 177 N.J. 505 (2003) (reprimand for attorney who failed to comply with court orders (at times defiantly) and the special master's direction not to contact a judge; the attorney also filed baseless motions accusing judges of bias against him, failed to expedite litigation and to treat with courtesy judges, his adversary, the opposing party, an unrelated litigant, and a court-appointed custody evaluator, used means intended to delay, embarrass or burden third parties, made serious charges against two judges without any reasonable basis, made unprofessional and demeaning remarks toward the other party and opposing counsel, and made a discriminatory remark about a judge; in mitigation, we considered that the attorney's conduct occurred in the course of his own child custody case); In re Holland, 164 N.J. 246

(2000) (reprimand for attorney who, although required to hold in trust a fee in which she and another attorney had an interest, took the fee in violation of a court order); In re D'Arienzo, 207 N.J. 31 (2011) (censure for attorney who failed to appear in municipal court for a scheduled criminal trial, and thereafter failed to appear at two orders to show cause stemming from his failure to appear at the trial; by scheduling more than one matter for the trial date, the attorney inconvenienced the court, the prosecutor, complaining witness, and two defendants; in addition, failure to provide the court with advance notice of the conflicting calendar prevented the judge from scheduling other cases for that date; prior three-month suspension, two admonitions, and failure to learn from similar mistakes justified a censure); and In re LeBlanc, 188 N.J. 480 (2006) (censure for attorney's misconduct in three client matters, including conduct prejudicial to the administration of justice for failure to appear at a fee arbitration hearing, failure to abide by a court order by his failure to produce information, and other ethics violations; mitigation included, among other things, the attorney's recognition and stipulation of his wrongdoing, his belief that his paralegal had handled post-closing steps, and a lack of intent to disregard his obligation to cooperate with ethics authorities).

Suspensions have been imposed on attorneys guilty of conduct prejudicial to the administration of justice who either had significant ethics histories or were guilty of violating a number of ethics rules, or both. See, e.g., In re DeClemente, 201 N.J. 4 (2010) (three-month suspension for attorney who arranged three loans to a judge in connection with his own business, failed to disclose to opposing counsel his financial relationship with the judge, failed to ask the judge to recuse himself, made multiple misrepresentations to the client, engaged in an improper business transaction with the client, and engaged in a conflict of interest); In re Block, 201 N.J. 159 (2010) (six-month suspension where attorney violated a court order that he had drafted by failing to transport his client from prison to a drug treatment facility, instead leaving the client at a church while he made a court appearance in an unrelated case; the client fled and encountered more problems; the attorney also failed to file an affidavit in compliance with R. 1:20-20, failed to cooperate with disciplinary authorities, failed to provide clients with writings setting forth the basis or rate of the fees, lacked diligence, engaged in gross neglect, and failed to turn over a client's file; prior reprimand and one-year suspension); and In re Bentivegna, 185 N.J. 244 (2004) (motion for reciprocal discipline; two-year suspension for attorney who

was guilty of making misrepresentations to an adversary, negotiating a settlement without authority, filing bankruptcy petitions without authority to do so and without notifying her clients, signing clients' names to documents, making misrepresentations in pleadings filed with the court, and violating a bankruptcy rule prohibiting the payment of fees before paying filing fees; the attorney was guilty of conduct prejudicial to the administration of justice, gross neglect, failure to abide by the client's decision concerning the objectives of the representation, failure to communicate with clients, charging an excessive fee, and making false statement of material fact to a tribunal, and other misrepresentations).

Witness tampering usually has been found alongside other very serious charges and has resulted in either a long-term suspension or disbarment. See, e.g., In re Steiert, 220 N.J. 103 (2014) (six-month suspension for attorney who, through coercion, attempted to convince his former client to execute false statements in order to exonerate the attorney with regard to prior discipline; in aggravation, the attorney's conduct was found to amount to witness tampering, a criminal offense; the attorney exhibited neither acceptance of his wrongdoing nor remorse; the attorney also had a prior reprimand, in 2010, for practicing law while ineligible and making misrepresentations in

an estate matter); In re Tamboni, 176 N.J. 566 (2003) (three-year suspension for attorney who was disbarred in the State of New York, following her federal conviction on one count of witness tampering (18 U.S.C. §11512(b)); the attorney had an extra-marital affair with a major crime figure, whose son was serving a life sentence in federal prison for "heinous crimes" related to organized crime; the attorney was complicit in the hiding of a witness from federal agents, in order to avoid a subpoena to testify before a grand jury about the father's attempt to tamper with a juror in the son's trial); and In re Scola, 175 N.J. 58 (2002) (attorney disbarred after pleading guilty to third-degree theft by deception (N.J.S.A. 2C:20-4 and N.J.S.A. 2C:2-6) arising out of an illegal check writing and cashing scheme and third-degree witness tampering (N.J.S.A. 2C:28-5(a)(i)) for discussing with his law partner, who had been arrested in the scheme days earlier, how they would shift the blame for the scheme to a third party; the attorney also told his partner that he should tell investigators that he knew nothing about the scheme).

Here, respondent's misconduct was considerably less serious than Tamboni's and Scola's. Tamboni received a three-year suspension because of the seriousness of her crime, her willing affiliation with criminals, and her participation in a scheme to

subvert "a legitimate governmental process." Scola, who was disbarred, was also found guilty of an illegal check-kiting and check-cashing scheme.

In this case, although misguided in the course of action he chose, respondent was attempting to remove someone he considered dangerous from his and his family's lives. Although his conduct amounted to a violation of the statute, there was no obstruction of any proceeding, there was no harm to any party, and the misconduct was not committed for personal gain. Further, unlike Steiert, respondent has shown significant remorse.

In aggravation, respondent's history includes a three-year suspension, based on his prior criminal conviction. In that matter, respondent pleaded guilty to four crimes - commercial bribery and breach of duty to act disinterestedly, forgery, falsifying records, and false swearing, violations of RPC 8.4(b), and RPC 8.4(c). Here, respondent admitted that he concocted a story about participating in a police sting in order to catch Richard taking a bribe, that he told this story to the OAE to explain his having offered Richard \$5,000, and that no such operation was conducted by the police. Thus, although the stipulation did not specifically address a violation of RPC 8.4(c) or RPC 8.1(a), we take into consideration, as an aggravating factor, respondent's admitted misrepresentations.

In mitigation, however, respondent has otherwise cooperated and readily admitted his misconduct by entering into a stipulation. Respondent himself has submitted a statement of mitigation that not only reflects contrition, but also reveals an immensely trying time for respondent and his family as the result of Richard's threatening and harassing behavior. The narrative is compelling and puts into context respondent's willingness to abandon his legal avenues in favor of a quick payoff to obtain Richard's agreement to cease harassing him and his family. Respondent considered himself and his family to be victims of actions by an individual whom he considered both dangerous and unstable, and who had a history of threatening behavior and violence. Respondent, thus, was fearful for the safety of his family.


In counterbalance, as compelling as we find respondent's narrative – at least in respect of this offer to pay Richard to withdraw or refrain from filing criminal charges – respondent's difficult predicament does not justify or explain his decision to disobey a court order, disqualifying him from the continued representation of Nancy against Richard, or his misrepresentation to the OAE. Again, however, respondent's conduct was not motivated by personal gain and did not result in any harm to a client or third party.

Although respondent's misconduct is serious, it falls short of that in Steiert, Tamboni, and Scola. Nonetheless, the totality and seriousness of his conduct is deserving of more than the censure recommended by the OAE. On balance, based on not only respondent's disciplinary history, but also on the mitigating factors he offered, we determine a three-month suspension to be the appropriate discipline for respondent's misconduct.

Members Boyer and Singer voted for a censure and filed a separate dissent. Member Clark 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
Bonnie C. Frost, Chair

By: 
Ellen A. Brodsky
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
CORRECTED VOTING RECORD

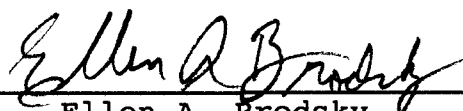
In the Matter of Salvatore De Lello
Docket No. DRB 16-139

Argued: September 15, 2016

Decided: December 16, 2016

Disposition: Three-month suspension

Members	Three-Month Suspension	Censure	Did not participate
Frost	X		
Baugh	X		
Boyer		X	
Clark			X
Gallipoli	X		
Hoberman	X		
Rivera	X		
Singer		X	
Zmirich	X		
Total:	6	2	1


Ellen A. Brodsky
Chief Counsel