

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

---

:  
:  
:  
:  
:  
:  
:

Dissent

Argued: September 15, 2016

Decided: December 16, 2016

We dissent because we do not believe that respondent engaged in witness tampering, the most serious of the three ethics violations found by the majority. Accordingly, we would impose the censure recommended by the Office of Attorney Ethics (OAE), but only for the two remaining violations of RPC 1.9(a) (conflict of interest) and RPC 8.4(d) (conduct prejudicial to the administration of justice), not the three-month suspension recommended by the majority.

Although respondent and the OAE stipulated that respondent violated RPC 8.4(b) by witness tampering, the stipulated facts do not support a finding that witness tampering occurred because: (a) no criminal charges were pending against respondent; and (b) there

is no evidence to suggest that criminal charges could have been brought.

The witness tampering statute, N.J.S.A. §2C:28-5, provides, in pertinent part:

a. A person commits an offense if, believing that an official proceeding or investigation is pending or about to be instituted or has been instituted, he knowingly engages in conduct which a reasonable person would believe would cause a witness or informant to:

(1) Testify or inform falsely;

(2) Withhold any testimony, information, document or thing;

(3) Elude legal process summoning him to testify or supply evidence;

(4) Absent himself from any proceeding or investigation to which he has been legally summoned; or

(5) Otherwise obstruct, delay, prevent or impede an official proceeding or investigation.

\* \* \*

d. Bribery of a witness or informant. A person commits a crime of the second degree if he directly or indirectly offers, confers or agrees to confer upon a witness or informant any benefit in consideration of the witness or informant doing any of the things specified in subsection a. (1) through (5) of this section.

The stipulated facts establish that there was no pending criminal proceeding, and the evidence of record does not support a finding, in our view, that an "official proceeding or

investigation" was either pending or about to be instituted, or that respondent believed that to be so. Respondent's former client, Richard Hone, had made repeated threats, in an apparent effort to intimidate respondent, that were not carried out.<sup>1</sup> Indeed, the majority opinion makes clear that respondent offered money to Hone out of sheer desperation to convince him to stop harassing and threatening him and his family. Although respondent sent Hone a lengthy email offering to pay him money to stop multiple types of destructive, threatening, frightening behaviors including "drop[ping] the criminal charges," the stipulation states (at ¶26) that "[t]here were in fact no criminal charges."

The majority opinion itself well describes the reasons that respondent offered money to Hone, none of them illegal:

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.

---

<sup>1</sup>The Stipulation includes the following:

20. R. Hone had frequently threatened criminal charges against the Respondent alleging that Respondent failed to return funds owed.

21. R. Hone frequently emailed Respondent threatening further ethics grievances, criminal complaints and civil litigation.

\* \* \*

29. R. Hone threatened criminal charges, civil lawsuits, and ethics charges in an offensive, aggressive and insulting manner via email and or phone message.

(Opinion, at 20). As described by the majority (at p. 6), Hone had recently been released from prison, where he served a sentence for threatening court personnel, had "a long criminal history dating back to 1990," suffered from bi-polar disorder and alcohol and cocaine addiction, and had five domestic violence restraining orders entered against him since his recent release from prison. He had, according to the majority opinion, "relentlessly filed ethics complaints, criminal complaints, and frivolous litigation, and harassed respondent's mother, son, and ex-wife." He had called respondent's eighty-year-old mother using "foul language" and "threatened that he was coming after them." The majority acknowledges (at pp.8-9) that respondent believed that Hone "may have been approaching a violent stage" and that respondent "believed that the system had failed and the police could do nothing to prevent [Hone] from unleashing a violent attack against his family" and that "the only solution was the payment" to Hone.

In short, respondent offered Hone money in a desperate attempt to convince him to cease all of the threatening, ominous behaviors waged against him and his family. That one of Hone's many threats included filing frivolous criminal charges does not support a finding that respondent engaged in witness tampering, as defined in the statute governing that conduct.

Since there was (1) no pending criminal charge, (2) no evidence in the record to support a finding that Mr. Hone would

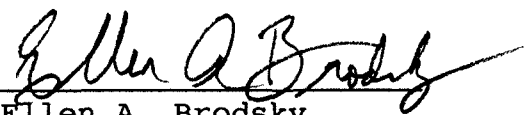
actually file such a charge (as opposed to making threats, which he had done repeatedly on other occasions) and (3) no evidence to support the conclusion that a prosecuting authority was likely to file any criminal charge -- or even that respondent had committed a crime to be prosecuted -- there was no pending or likely proceeding with which witnesses could be tampered so as to violate N.J.S.A. §2C:28-5. Thus, the evidence is not sufficient to demonstrate, by clear and convincing evidence, that respondent violated RPC 8.4(b), in our view.

We recognize that, in the stipulation, respondent admitted to violating RPC 8.4(b). However, for purposes of imposing the appropriate level of discipline, we choose to disregard that admitted violation based upon the analysis set forth herein.

We believe that the remaining ethics violations, viewed in the context of respondent's prior ethics history, support imposition of a censure, as recommended by the OAE, and that is the level of discipline we would impose, as a result of which we respectfully dissent from the majority decision imposing a three-month suspension.

Disciplinary Review Board  
Anne C. Singer  
Peter J. Boyer

By:

  
Ellen A. Brodsky  
Chief Counsel