SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket Nos. DRB 16-067 and 16-068
District Docket Nos. XIV-2007-0646E
and XIV-2008-0070E

IN THE MATTERS OF	:
ANGELA M. ROPER AND KENNETH S. THYNE	:
ATTORNEYS AT LAW	:

Decision

Argued: September 15, 2016

Decided: February 1, 2017

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

Angela M. Roper, respondent, appeared pro se.

Kenneth S. Thyne, respondent, appeared pro se.

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

These matters were before us on a recommendation for the disbarment of respondent Angela Roper and the one-year suspension of respondent Kenneth Thyne filed by a special ethics master, based on his finding that both respondents violated RPC 1.7(a)(2) (conflict of interest with a client), RPC 1.10(a)

(imputation of conflict of interest), and RPC 8.4(d) (conduct prejudicial to the administration of justice); and his finding that respondent Roper additionally violated RPC 3.4(c) (knowingly disobey an obligation under the rules of a tribunal) and RPC 8.4(d). We determine to censure respondent Roper for her misconduct and to impose a reprimand on respondent Thyne.

Roper was admitted to the New Jersey bar in 1988. At the relevant times, she was a partner in the law firm of Roper & Twardowsky in Totowa. She is currently a partner in the law firm of Roper & Thyne, LLC. She has no prior discipline.

Thyne was admitted to the New Jersey bar in 1990. At the relevant times, he was an associate in the firm of Roper & Twardowsky in Totowa. He is currently a partner in the firm of Roper & Thyne, LLC.

On June 27, 2013, Thyne was reprimanded for making misrepresentations to the United States Court of Appeals, Second Circuit, in his application for admission, in violation of RPC 3.3(a)(1) (knowingly making a false statement of material fact or law to a tribunal); RPC 8.1(a) (knowingly making a false statement of material fact in connection with a bar admission application or in connection with a disciplinary matter); RPC 8.1(b) (failing to disclose a fact necessary to correct a misapprehension known by the person to have arisen in the

matter); and RPC 8.4(c) (engaging in conduct involving dishonesty, fraud, deceit or misrepresentation), when he failed to disclose that his law license in Minnesota was inactive and there were pending ethics matters against him. In re Thyne, 214 N.J. 1074 (2013).

The procedural history, in these matters, including respondents' pre-hearing and hearing conduct, served, in part, as the basis for the special master's findings. Before we address the procedural history, we provide the following brief introduction to the underlying facts. A group of former employees of Prudential Life Insurance Company (Prudential) retained Leeds, Morelli and Brown (LMB) to sue Prudential for discriminatory practices (the Prudential litigation). Although the case settled, as part of the settlement, Prudential paid an "advance" to the plaintiff's law firm, LMB, without notice to the plaintiffs. Alleging that Prudential "bought off" their counsel, the plaintiffs then retained respondents to sue both their prior counsel and Prudential. Lederman v. Prudential Insurance Company of America, Inc. (Lederman). In turn, LMB filed a collateral lawsuit against respondents, personally, as well as two lawsuits against respondents' former and current clients.

On November 18, 2011, the Office of Attorney Ethics (OAE)

filed a complaint against respondents alleging, in the first count, that they engaged in a conflict of interest by making the settlement of their clients' claims in the Lederman litigation contingent on the dismissal of collateral matters in which respondents had personal interests. The second count charged Roper with violating an order in the Lederman matter by providing sealed documents to a third party.

After receiving extensions, Roper and Thyne filed answers to the complaint on February 15 and February 16, 2012, respectively.

On May 8, 2012, a special master was appointed but recused herself on August 31, 2012, based on Roper's allegation that she had an "impermissible conflict of interest." On October 16, 2012, the current special master was appointed. After the exchange of more than thirty e-mails regarding, in part, the parties' availability, a pre-hearing conference was scheduled and held on March 5, 2013.

On April 5, 2013, Thyne retained new counsel and a second pre-hearing conference was held on April 25, 2013 to address respondents' discovery issues. On May 24, 2013, Roper requested a ninety-day extension because the Lederman litigation was still pending. The extension was granted and the hearing was scheduled for September 23, 2013. Because the OAE investigator was

previously scheduled to participate in another hearing on that date, the OAE requested an adjournment to October 2, 2013. The special master granted the OAE's request.

In a letter dated September 9, 2013, Roper requested that the matter again be postponed, until November 12, 2013, based on the pending Lederman litigation and her medical condition. Further, for the first time, the respondents indicated that they had vacations scheduled in October and November. The OAE objected to respondents' request. Also during this time, Thyne indicated that his new counsel had withdrawn. By letter dated September 13, 2013, the special master denied the request for another postponement, finding that R. 1:20-8 gave the matter precedence over other administrative, criminal, and civil matters, including the Lederman litigation. The special master offered to accommodate Roper for her medical condition in respect of the logistics of the hearing.

On September 19, 2013, Roper submitted a request for a stay of the hearing, based on her medical condition, attaching a letter from her physician limiting her to a four-hour work day. Again, the OAE objected to the postponement. By e-mail dated September 23, 2013, the special master reiterated that the hearing would commence on October 2, 2013. He, however, subsequently postponed the hearing for one day to accommodate

Roper's medical appointment.

On September 27, 2013, Roper requested another postponement, claiming that the hearing would have a negative impact on the Lederman litigation and, further, that she would be unable to defend herself in the ethics matter for fear of revealing information that could affect her clients in the underlying litigation. The special master denied her request, but granted a recess of the hearing dates scheduled between October 7 and October 18, 2013. The hearing was to commence on October 3, 2013, and continue on October 4, 2013.

On October 1, 2013, Roper filed a motion for emergent relief with the Court, seeking a stay of the pending ethics matter. The Court denied Roper's motion on October 2, 2013.

The hearing commenced on October 3, 2013. During the first day of the hearing, Roper left the courtroom. Her counsel, Robyn M. Hill, who had been involved in the case since the investigation stage, reported that Roper had been taken to the hospital by ambulance. Roper did not appear for the next ten hearing days. On April 21, 2014, she appeared with counsel. Testimony, including Roper's direct testimony, was presented over the next five days of hearing.

During the course of the hearing, respondents filed various motions: for dismissal of the charges; for the recusal

of the special master; and for Roper to serve as co-counsel along with Hill or for Hill to be permitted to withdraw. Respondents also claimed that the complaint did not provide them with fair notice of the charges.

An important component of these motions, however, was Roper's failure to attend a majority of the hearing dates. Hill maintained that Roper was unable to do so, based on her medical condition. The special master repeatedly requested documentation from Hill for Roper's absence. He offered to review the private medical documents in camera. After reviewing the documents that Hill produced, the special master did not accept Roper's explanation that her absence was due to her medical condition, and observed that the nature of her medical condition had not been conveyed to him. Moreover, the special master noted, Roper never availed herself of the accommodations that were offered to allow her to participate, and continued to represent clients and participate in the Lederman litigation during the period of her alleged disability.

On August 28, 2014, during the fifteenth day of the hearing, Hill told the special master that she and Roper had a "fundamental disagreement in terms of how to proceed." Thus, Hill, again, pursuant to RPC 1.6(b)(4), requested permission to withdraw. The special master instead directed Hill to move

forward with the direct testimony of Roper.

During the course of Hill's direct examination of Roper, she stated, "I am not able to continue for the reasons previously expressed to you." The special master denied her request to withdraw as counsel, based on his concern that Roper would not appear at future hearing dates. He offered Roper the opportunity to consult new counsel, explaining that, if she had substitute legal representation, he would permit Hill to withdraw.

The next hearing date was scheduled for September 3, 2014. The special master offered Roper an opportunity to file an emergent application with the Court by September 2, 2014 regarding his denial. He denied Hill's request for additional time to file an application to allow her to obtain the transcripts for the Court.

No application was filed with the Court. Rather, in a September 2, 2014 letter to the special master, Hill reiterated her position that she could not continue to represent Roper:

> As I placed on the record last Thursday, it is clear to me that both Your Honor and the Office of Attorney Ethics do not want to allow Ms. Roper to speak for herself for fear that the record presented will result in the unavoidable conclusion that the Office of Attorney Ethics and others involved in this matter have acted in both an unethical and potentially criminal fashion in this matter, and in the underlying Lederman case.
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> [Ex.SEM-3.]

Further, Hill rejected the special master's suggestion that she raise the issue with the Court, contending that it would be inappropriate because the matter may be before the Court at a future date. She again argued that she was unable to proceed without the transcripts and that it would violate Roper's "constitutional rights to due process of law and fundamental fairness to go forward under these circumstances." Hill also claimed the special master violated the Code of Judicial Conduct by being discourteous to Roper and declining to accept her medical explanations.

Finally, Hill complained that the special master had been discourteous to her for "failing to recognize that as a sole practitioner, who was discharged at the beginning of these hearings and is not being paid, and who operates without a staff, [she was] unable to keep up with the demands of this matter." She announced that, "we will not be appearing in this matter on September 4th, 5th or 6th. Kindly do not misinterpret this decision as a failure to cooperate or to in any way demonstrate contempt of these proceedings. Rather, the delay is imperative in order to protect Ms. Roper's rights from being trampled further." By letter dated September 3, 2014, to Mark Neary, Clerk of the Court, Hill requested an emergent stay of the proceedings.

In respect of Hill's accusation that the OAE had acted in an unethical manner, the special master replied, "I have not heard any evidence that would support that allegation by Ms. Hill." He then read into the record an e-mail that he sent to Hill on the evening of September 2, 2014:

> Dear Ms. Hill, I received and have read your email of September 2nd, 2014, with letter attached. Your letter contains numerous misstatements which you advance as justification for not appearing on September 3rd, 2014, to continue the hearing in the matters of OAE versus Roper and OAE versus Thyne. I note that your email and letter were sent at 4:21. I have checked my email repeatedly during the day to see if any messages were received from you and was en route home from four p.m. and five p.m., and hence did not have an opportunity to read and reply to your letter until now. I am not postponing the hearing scheduled for tomorrow, September 3rd, 2014. I will proceed with the hearing. And I am directing you, Ms. Kim, Mr. Thyne, Ms. Roper and the court reporter to be present at ten a.m. as previously scheduled. I will address the contents of your letter at that time. I will also give you, Ms. Kim, and Mr. Thyne an opportunity to be heard at that time.
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> [22T11-12.][1]

In an e-mail sent at 6:59 p.m., Hill told the special master that neither she nor Roper would be appearing on September 3, 2014, as there was "nothing to be gained by our

[1] "22T" refers to the hearing transcript dated September 3, 2014.

appearance tomorrow" and that they would pursue a remedy elsewhere, once the transcripts were received. At 8:47 p.m., the special master informed all parties that the matter would proceed as scheduled on September 3, 2014. Roper and Hill did not appear at that hearing.

After confirming that the Court had not stayed the matter, the special master stated, "Ms. Hill and Ms. Roper have chosen not to be present today, despite my direction that they be here . . . I find that their absence is inexcusable, is voluntary." The special master then continued the matter until 1:00 p.m. to provide Roper and Hill one last opportunity to appear. He also warned that, if they did not appear, the testimony would be concluded, and because the OAE did not have an opportunity to cross-examine Roper, he would strike her direct testimony. He directed Thyne to inform Hill and Roper that, unless they appeared at 1:00 p.m., Roper's testimony would be stricken.

On returning to the record, the special master noted that only the OAE was present; Thyne had been excused, but Hill and Roper had failed to appear. He also indicated that, at 11:47 a.m., he had received an e-mail from Gail Haney, Deputy Clerk of the Supreme Court, stating that she had sent Hill an e-mail advising her of the proper procedures to follow in order to seek emergent relief. Haney also indicated that she had not received

any further contact from Hill. On the record, the special master explained that he had received an e-mail

> from Ms. Hill saying that she was informed of my ruling that I would provide her an opportunity to appear at one p.m. today. For the reasons set forth on the record and in her letters, neither Ms. Hill nor the client shall be appearing at one p.m. and they are going to await the transcript and pursue their remedies as previously advised.
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> [22T28-29.]

The hearing proceeded and Roper's five days of direct testimony were stricken. The matter was then scheduled for September 19, 2014, for the sole purpose of marking and finalizing exhibits. On September 19, 2014, the special master stated that he had received a letter from Hill, dated September 17, 2014, in which Hill claimed that proceeding with the case would further violate Roper's constitutional rights.

In his e-mail response, which he read into the record, the special master stated that Roper's constitutional rights would not be affected by marking exhibits and that he viewed the refusal of Hill and Roper to appear as "another attempt to delay this matter." He continued, "I have never had an attorney appearing before me refuse to continue a matter. That is not appropriate conduct for an attorney or a client. I again strongly advise you and Ms. Roper reconsider and advise me that you will appear tomorrow to be heard on the marking of various

exhibits." By letter dated September 18, 2014, in response to the special master's e-mail, Hill declared that neither she nor Roper would be attending the hearing because he "violated and continu[ed] to violate Ms. Roper and [her] constitutional and due process rights." Hill and Roper did not appear before the special master on September 19, 2014.

We now turn to the facts underlying respondents' representation leading to the ethics complaint. Lawrence Lederman was employed by Prudential Life Insurance Company as a sales agent and manager. Lederman v. Prudential Life Ins. Co., 385 N.J. Super. 307, 312 (2006). Lederman claimed that he left Prudential due to a mental breakdown after Prudential pressured him to refrain from selling insurance to minorities and discriminated against him and others who did. Ibid. He and 358 employees, who claimed they had faced similar discrimination (Prudential employees), met with LMB to discuss retaining LMB to pursue claims against Prudential. Ibid. The Prudential employees entered into a fee agreement whereby LMB would receive a one-third contingent fee. Ibid.

On May 5, 1999, the Prudential employees entered into an agreement (ADR Agreement) with Prudential to engage in confidential alternative dispute resolution, known as "Roads to Resolution," to resolve their claims against Prudential. Ibid.

The ADR Agreement provided that Prudential would pay the Prudential employees' legal fees to LMB, but it did not specify the dollar amount. Ibid. Under the ADR Agreement, Prudential also agreed to resolve disputes about the terms of the ADR Agreement through AAA arbitration. No party could disclose the content or result of the ADR agreement. Ibid. Any court action to enforce the agreement was required to be filed under seal. Ibid. LMB represented, advised, and acted on behalf of the Prudential employees in the entry of the ADR agreement. The ADR Agreement served as the basis for the Prudential employees to dismiss their complaints against Prudential.

Also on May 5, 1999, unbeknownst to the Prudential employees, Prudential and LMB entered into a separate agreement (Fee Agreement), which more explicitly set forth the fee LMB would receive as a result of the ADR Agreement. Specifically, Prudential agreed to pay LMB $15,000,000 to resolve the employee's disputes: $5,000,000 represented counsel fees paid to LMB in advance of any resolution and the remaining $10,000,000 constituted funds to be paid to the Prudential employees to resolve their claims. Lederman, 385 N.J. Super. at 313. Prudential would make an initial advance of $3,500,000, followed by an advance of $500,000. Ibid. Although it was "reasonably anticipated" that LMB would earn the fee, it was not a

requirement under the Fee Agreement. Ibid. Lederman participated in the ADR process and was awarded $500,000 for his employment claims. Ibid.

In the summer of 2002, Lederman and two other Prudential employees retained Roper & Twardowsky (the Firm) to pursue claims against Prudential and LMB for commercial bribery and fraud, based on Prudential's payment of LMB's legal fee. On November 8, 2002, the Firm filed a complaint in the Superior Court of New Jersey, Law Division, Essex County; the complaint was not filed under seal.

LMB retained the Rivkin Radler law firm to represent it in the Lederman litigation. Steven Kesselman and Janice DiGennaro of Rivkin Radler were admitted pro hac vice. Kesselman led the negotiations with the Firm.

Shortly after the complaint was filed, the defendants filed an application with the trial court for a preliminary restraining order sealing the pleadings and documents and barring public access to the court proceedings. Lederman, 385 N.J. Super. at 313-14. On December 13, 2002, the trial court granted the defendants' request and precluded Lederman and his counsel from violating the confidentiality agreement contained in the ADR Agreement. Id. at 314. The judge sealed the entire record, "including all documents, transcripts, motions and

pleadings" and scheduled the matter for an order to show cause, returnable on February 24, 2003, as to the entry of a protective order. Lederman, 385 N.J. Super. at 314. The sealing order also restrained and enjoined the parties from filing future complaints that disclosed the terms of the agreements and from discussing the terms of the agreements "with experts or other such consultants until after entry of the Protective Order." The sealing order was continued in July 2003 and August 2003, pursuant to R. 4:10-3.[2] Lederman, 385 N.J. Super. at 314.

When the Firm filed the original complaint, it was not in possession of the Fee Agreement. After its receipt, the Firm filed an amended complaint under seal and attached the Fee Agreement. Essentially, Lederman claimed that (1) the $4,000,000 advance to LMB was a commercial bribe; (2) LMB and Prudential conspired to defraud and deceive him; and (3) Prudential conspired with LMB to deprive him of LMB's zealous representation. Lederman, 385 N.J. Super. at 313. The complaint was dismissed based on the Court's determination that the

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[2] Rule 4:10-3 states in relevant part: "on motion by a party... the court, for good cause shown or by stipulation of the parties, may make any order that justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense."

arbitration clause in the ADR agreement precluded litigation. The Firm appealed the dismissal.

According to Thyne, during the pendency of the appeal, the Firm sought to bring in co-counsel, because respondents recognized that, if the dismissal order were reversed, they, as a two-person firm, would not be able to handle the case. Steven Snyder, then with the law firm of Snyder, Weltchek, and Snyder, in Baltimore, had been advertising that he was looking for a "billion-dollar case." After Roper contacted him, Snyder agreed to join as co-counsel. Kesselman believed that Snyder would handle the trial if the matter reached that stage.

The issues on appeal were whether the sealing order was permissible and whether the arbitration clause was enforceable. The Appellate Division found that the defendants failed to prove the "need for secrecy" and vacated the sealing order. Lederman, 385 N.J. Super. at 322. In a separate appeal, the plaintiffs also were successful in reversing the dismissal order. Lederman v. Prudential, 385 N.J. Super. 324 (App. Div. 2006). The Appellate Division found that the arbitration clause in the ADR Agreement did not encompass Lederman's claims and, therefore, reinstated the complaint. The substantive issues were to be resolved by the fact-finder, not an arbitrator. Id. at 338, 345-46.

Thereafter, the parties engaged in settlement discussions from early 2007 through June 2007, primarily concerning the claims against LMB, not Prudential. During this time, there was also pending litigation in collateral matters involving respondents and certain of their current and former clients (non-Lederman matters).

Specifically, in litigation filed in New York, LMB alleged that Brian Hodge had violated a confidentiality agreement, which contained a liquidated damages provision. LMB was successful on summary judgment. Roper and local counsel represented Hodge.

Rivkin also had obtained a judgment in New York against Connie Hernandez and L'Oreal Diaz on behalf of LMB. Roper and local counsel represented Hernandez and Diaz and filed an appeal. Roper had paid the Hernandez/Diaz judgments, as she was personally liable.

In Colorado litigation, entitled Leeds v. Roper (Leeds matter), LMB filed a defamation lawsuit against respondents, based on statements they had made in an unrelated matter about LMB, specifically, that LMB had engaged in misconduct while representing clients in a discrimination matter. Due to a lack of prosecution, the potential award had been limited to nominal damages. Although all parties believed that the Leeds matter was active during the time of the Lederman litigation, it actually

had been dismissed on March 9, 2007. DiGennaro (Kesselman's co-counsel) and Roper did not learn of the dismissal until summer 2013. Respondents claimed the collateral matters were filed in order to distract and intimidate them.

According to Kesselman, he learned, in April 2007, of the Firm's demand that certain non-Lederman matters be dismissed as a condition of settling the Lederman case. Although he was aware of the non-Lederman litigation, he did not represent any of the parties and was not otherwise involved. He claimed that, as a condition of settling the Lederman matter, respondents demanded that LMB dismiss the non-Lederman litigation. Kesselman testified that he spoke with Robert Weltchek, of Snyder's firm, who conveyed respondents' demands.

Kesselman explained that two in-person settlement meetings took place: one on April 24, 2007 at which he, Snyder and respondents engaged in settlement discussions, and the second on May 4, 2007, among the same parties, except Thyne. The parties discussed only the Lederman litigation, with no demand made for dismissal of non-Lederman cases.

On May 24, 2007, however, Thyne sent a memorandum to Weltchek, with a copy to Snyder and other co-counsel, Madeline Houston, which stated that "any settlement with LMB must have certain safeguards, i.e., provisions to be effective and to

protect us and our clients." The memorandum included the following settlement conditions: (1) LMB must provide discovery; (2) LMB must represent that it has only $2,000 of indemnity remaining in its insurance policy and has no personal assets; (3) LMB must avail itself of discovery; (4) LMB must release the clients from any claims; and, (5) specifically

> Angela has discussed with you this collateral litigation regarding clients (Hernandez, Diaz) against whom LMB has a judgment that is currently on appeal and the collateral litigation in Colorado. While I am a Defendant in the Colorado litigation and couldn't give a [s#!@] about it, the other suits must be dismissed as well.
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> [Ex.C-47.]

Weltchek read excerpts of Thyne's memo to Kesselman, as a follow-up to the conversation they had in April 2007 about the Firm's demands for dismissal of the collateral litigation. Kesselman explained that Weltchek, the Firm's co-counsel, reported the demands, but did not endorse them; Weltchek agreed with Kesselman that they were improper and unethical.

In a June 6, 2007 telephone conversation, Roper told Kesselman that, "unless your clients dismiss their lawsuit against Brian Hodge . . . we are never going to settle the Lederman case." At this time, Kesselman and Snyder (respondents' co-counsel) were finalizing terms of a settlement with the Lederman matter. Kesselman replied that Roper was acting

unethically because she was trading claims to benefit her client Hodge, at the expense of her 350 clients in the Lederman case. Nevertheless, Roper insisted that, if LMB did not dismiss the other cases, she would never agree to the settlement in the Lederman case, adding, "that [Kesselman] and [DiGennaro] ought to get ready for the ride of [their] lives." Roper then terminated the telephone call. Roper's demand was made the day before the parties in the Hodge matter were scheduled to go to court to determine the amount of damages against Roper's client.

Kesselman then contacted Snyder, Roper's co-counsel, to inform him of Roper's verbal demands. Kesselman told Snyder "in no uncertain terms that these demands were wholly unethical and that my firm and my clients could not and would not accept them, even if the consequence was a collapse of the settlement with plaintiffs."

In addition, Kesselman immediately informed his own co-counsel, DiGennaro, of Roper's settlement demand. DiGennaro sent a letter, dated June 22, 2007, detailing Roper's demands and accusing her of making an unethical request. In a June 25, 2007 letter to DiGennaro, Roper replied that, "what you believe matters nothing to me . . . I will let you know that given my observations of your practices that you shall be among the last persons I ever consult regarding what is ethical or proper."

During the third week of June 2007, in a telephone call with Thyne, Kesselman refused to discuss the collateral litigation because he was not willing to include in the LMB settlement agreement any language related to dismissing those matters. Kesselman and DiGennaro admitted, however, that they never had a direct conversation with Thyne regarding the collateral litigation.

Shortly after the telephone call with Thyne, Kesselman reviewed a fax from Thyne to Snyder proposing certain language for the settlement agreement. Because Thyne was still participating in negotiations, Kesselman assumed that Roper had decided to settle the case without dismissal of the collateral litigation.

As a result, on June 22, 2007, Kesselman signed a settlement agreement with Snyder on behalf of their respective clients. Kesselman believed that Snyder had the authority to enter into this agreement because Snyder had taken the lead in all aspects of the litigation and negotiations. The settlement agreement included most of the 350 plus plaintiffs, but excluded twenty to thirty of the plaintiffs.

In September 2007, Kesselman became aware of a major division between Roper and Snyder. By September, more than 100 plaintiffs claimed that they were not bound by the settlement.

On September 17, 2007, Rivkin Radler filed (1) a motion to enforce the settlement and sought a sanction in the amount of $150,000; (2) a motion to dismiss the complaints of the plaintiffs who did not agree to the settlement; and (3) a motion to disqualify the Firm. During oral argument, contrary to representations previously made to DiGennaro and Kesselman, Snyder claimed that he intended for each of the clients to execute the settlement agreement. The motions were denied. Kesselman, however, recalled that the judge placed on the record a statement that, although the Firm's conduct was not before him, "consideration should be given to presenting this evidence to the [OAE]."

* * *

The special master issued a protective order in this matter on December 2, 2013. Most of Thyne's testimony was offered under protective order and, thus, has not been included in this decision.

Hill called several of respondents' clients to testify regarding LMB's alleged use of "runners"; to support the claim that the Firm had not put its interests ahead of those of the clients; and to offer character testimony.

Count two charged Roper with violating the court's sealing order. Jeanine Verdel, OAE Assistant Chief of Investigations,

testified about information she had received regarding Roper's communications with Keifer Bonvillain, the third party with whom Roper allegedly communicated, in violation of the protective order in the Lederman litigation. Bonvillain had contacted Roper in December 2003, representing that he was chairman of the Labor and Industry Committee of the NAACP in Fayette, Georgia. He had apparently read articles and documents regarding the Prudential employees and the Lederman litigation, and offered to assist Roper with the case. Verdel characterized Bonvillain's credibility as "questionable at best."

Verdel reviewed a conversation between Roper and Bonvillain, which Bonvillain had taped. The conversation revealed that Roper had hoped that Bonvillain would be able to contribute NAACP resources to help the non-New Jersey Prudential employees obtain legal representation. Although Roper acknowledged the existence of documents under protective order, she was not opposed to disclosing them to Bonvillain. She specifically said, "they are not a secret as far as I am concerned." Roper provided Bonvillain with a copy of the complaint, with the ADR and Fee agreements attached.

Verdel received from LMB's counsel a copy of the package that Roper had sent to Bonvillain. The package included copies of a letter from counsel for a client in a New York matter that

enclosed a complaint (with attachments) against LMB and other documents, including copies of the ADR and Fee agreements. Bonvillain had provided LMB's counsel with the package, claiming that he had received it from Roper as a result of the December 2003 conversation. Bonvillain did not testify at the ethics hearing.

In her investigative report, Verdel had documented Roper's position that she believed her actions were in compliance with the sealing order because someone else had put the documents into the public domain.

Ancillary to the Lederman litigation was a contempt proceeding based on alleged violations of the December 2003 protective order.[3] The court granted the state's motion to dismiss the contempt charges. At the ethics hearing, Hill called as a witness Arthur Margeotes, the prosecutor who had handled the contempt charges. He found no evidence of contempt and reported DiGennaro to the OAE for LMB's unauthorized practice of law. He concluded that DiGennaro had a "personal vendetta" against respondents. On cross-examination, however, he

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[3] Because the charge was initiated by a Superior Court judge under R. 1:10-2, permission from the judge to whom the matter was assigned for trial was required for dismissal. In re Roper, 2006 WL 2919055 (October 11, 2006).

acknowledged that he is a friend of Roper and rents space in a building she owns. The court order noted that the contempt charge had been dismissed because of prosecutorial resources; there was no mention of proof issues. In re Roper, 2006 WL 2919055, at *9. The order also noted that the matter would be referred to the OAE. Id. at *12.

Respondents filed a litany of motions during the disciplinary hearing. On the first day, Thyne requested that his case be severed from Roper's, based on his belief that his case would be more succinct. Later in the proceedings, he renewed his motion, claiming that the special master had already made credibility determinations about Roper that would prejudice his case; that the special master was confusing the charges against Roper and him; and that he wanted to conclude his case, despite Roper's prolonging of the hearing. The special master denied Thyne's requests, explaining that separate hearings would result in a duplication of efforts and testimony.

Both respondents filed motions to dismiss the charges, pursuant to R. 1:20-5(d), at the conclusion of the OAE's case, contending that the evidence did not support the alleged violations. Specifically, in respect of count one, they argued that no evidence supported the charge that their interest conflicted with the "best interests of [their] clients." The

special master denied the motions, finding sufficient evidence to sustain both counts of the complaint.

Further, respondents argued that, notwithstanding the evidence presented, the complaint failed to provide fair notice of a conflict of interest with regard to the Hodge and Hernandez/Diaz matters. They maintained that paragraphs 14 through 20 of the complaint were deficient because they "linked" only the Lederman settlement to the Leeds matter and, therefore, respondents were not aware that the Hodge and Hernandez/Diaz cases were relevant to the charge. The OAE presenter conceded that, although the complaint was not the most "artfully" worded, it gave respondents sufficient notice about the Hernandez/Diaz and Leeds cases. The presenter further conceded that reference to the Hodge case could be used only to support the OAE's position that respondents engaged in a course of conduct in which they bargained for benefits in collateral litigation in the Lederman matter. In response to the OAE's acknowledgement that the complaint had been poorly written, Hill pointed out that Roper's affirmative defenses raised the issue of omitting references to Hodge and Hernandez/Diaz; yet, the complaint was not amended.

Respondents repeatedly pressed the special master to detail the charges against them. When he attempted to explain the

charges, respondents then accused him of acting as the prosecutor, and requested that he recuse himself.

In addition, on the first day of the hearing, consistent with an e-mail she had sent the prior day, Hill requested that Roper be permitted to act as co-counsel. In reply to the special master's request for the authority on which Hill relied, Hill stated that no authority prohibited it. She also relied on case law permitting parties to represent themselves. The special master rejected this argument as inapplicable because Roper had retained Hill and did not seek to represent herself, but rather to act as co-counsel. He also denied a motion to stay the proceedings to allow Roper to appeal his ruling.

In response to the denial of her motion to act as co-counsel, Roper terminated Hill's representation. The special master refused to permit Hill to withdraw as counsel, as Hill requested throughout the course of the proceedings. Hill contended that Roper had the right to represent herself; that Roper had a better understanding of the case; and that Roper was not paying legal bills and, thus, Hill could not continue to work under these circumstances. These arguments were made repeatedly throughout the hearing. The special master denied each request, finding it was not made timely; that Hill demonstrated a strong understanding of the case; and that Roper

might not appear, and, thus delay the hearings.

The presenter had objected to Hill's withdrawal because, in her view, Hill served as a "buffer" for Roper. The record demonstrated that Roper failed to act in accordance with the appropriate courtroom decorum. When Roper was present, her conduct repeatedly was disruptive and disrespectful. For example, she shouted that a particular ruling was "bull[@#$%]" and told the special master that "the blood will be on your hands" after he denied her motion for a stay.

Hill maintained that the special master's decisions to proceed with the matter in Roper's absence and to deny Hill's motion to withdraw as counsel violated Roper's constitutional right to due process.

Respondents also alleged that the special master demonstrated bias throughout the case. As noted above, they claimed that he served as prosecutor rather than as the trier of fact because he responded to their requests for an explanation of the charges against them. When he did not agree with respondents, they both repeatedly requested his recusal. Thyne went so far as to say, "you've lost your way judge."

Roper also maintained that the special master was biased because he had predetermined the case, made credibility findings prior to the conclusion of the hearings, and denied her request

to represent herself. She further alleged that his unwillingness to accept her medical documentation as sufficient justification for her failure to appear, demonstrated that he did not find her credible. According to respondents, the various instances of bias justified the granting of their motions for the special master's recusal. Respondents moved for the special master's recusal at every hearing date and, in some instances, multiple times per day.

Respondents also alleged that their due process and equal protection rights had been violated by the OAE's "selective prosecution." Essentially, they claimed that the OAE declined to pursue allegations of unethical conduct against LMB and related parties, but pursued the instant matters against respondents. They suggested that LMB was the actual grievant and was directing the OAE's investigation to gain a tactical advantage in the Lederman litigation.[4]

Respondents made several requests to the OAE to place their matters on untriable status, pursuant to R. 1:20-3. In a letter

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[4] According to the evidence, the judge in the contempt matter had referred respondents to the OAE. For unknown reasons, however, the OAE did not receive the referral. It was not until LMB's counsel requested information on the status of the matter that the OAE discovered that the judge had made the referral.

dated April 2, 2013, the OAE Director denied their requests, explaining that he was not willing to exercise his discretion to hold the matter in abeyance. Although respondents repeatedly raised this issue at the hearing, the special master ruled that the OAE Director's decision was not subject to his review.

The special master found that Roper engaged in a conflict of interest, knowingly disobeyed a court order and engaged in conduct prejudicial to the administration of justice. He found that Thyne engaged in a conflict of interest and engaged in conduct prejudicial to the administration of justice.

The special master accepted DiGennaro's testimony, finding her to be a credible witness. He noted that, in Roper's response to the letter from DiGennaro, accusing her of bargaining the collateral litigation, Roper never denied the accusations.

He also made credibility determinations of various witnesses. The special master did not find Margeotes credible. He recognized the personal relationship Margeotes had with Roper and noted the fact that he was a friendly and cooperative witness on direct but "combative" and "unfriendly" on cross examination. The special master also found that Margeotes' testimony regarding the reason for the contempt dismissal contradicted the reasons expressed in the judge's decision dismissing the contempt charge.

The special master found Kesselman's account of the facts credible, including that Kesselman learned of the firm's settlement demands in April 2007 and that he had a direct conversation with Roper about her requirement that the Hodge case be dismissed in order for the Lederman matter to settle. Similarly, he found Verdel credible and accepted her testimony that she reviewed the taped conversation between Roper and Bonvillain in which Roper expressed her willingness to give Bonvillain documents because they were, in her opinion, not secret.

As to Thyne, the special master did not find him credible, specifically as to the May 24, 2007 memo.

Although the special master had stricken Roper's testimony, he accepted the admissions in her answer to the ethics complaint. Specifically, he found that Roper admitted releasing the documents to Bonvillain without having obtained the required entry of a confidentiality agreement governing the exchange of the protected information. He further concluded that, "Roper's conduct in this matter exhibits a course of conduct deliberately calculated to violate the terms of the Sealing Order and to mislead the Court hearing the Prudential matter in an attempt to avoid responsibility for her actions." He rejected as not credible Roper's claim that her disclosure was unintentional.

In addition, he dismissed Roper's position that her conduct was permissible because the sealing order later was reversed; the order was in effect when Roper sent the documents to Bonvillain. The special master further rejected Roper's claim that the complaint she sent was not subject to the protective order. He found the attorneys were personally restrained from disclosing the agreements and Roper admitted engaging in this misconduct. As a result, he concluded:

> It is [sic] finding of the Special Ethics Master that the evidence clearly and convincingly proves that Respondent Roper violated RPC 3.4(c) in that Respondent Roper knowingly disobeyed an obligation under the rules of a tribunal, and in so doing violated RPC 8.4(d) in that Respondent's conduct was prejudicial to the administration of justice.
>
> [SMR13.][5]

The special master also found that the OAE proved that respondents had engaged in a conflict of interest. He noted that respondents' demands in respect of dismissal of the collateral litigation benefitted Roper and Thyne personally, at the expense of their clients.

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[5] "SMR" refers to the special master's report, dated November 13, 2015.

The special master concluded that, even if he limited his consideration to only the Leeds matter, as respondents had urged, there was sufficient proof that respondents engaged in a conflict of interest. Specifically, he noted that, although the Leeds litigation actually had been dismissed prior to Thyne's memo, respondents believed that it was pending at that time. He rejected respondents' position that they were not concerned with the Leeds case because it had been limited to nominal damages. He concluded that the amount was irrelevant; respondents "had a personal interest in seeing Diaz and Hernandez judgments withdrawn." He placed significant weight on the May 24, 2007 memo and found that Roper either was complicit with Thyne's sending the memo or directed him to send it.

The special master concluded:

> Respondents argue that there is no real evidence of wrong doing on their part. This is not true. The most damning evidence comes from the Respondents themselves. In reviewing Exhibits C-60, C-61, C-47, and the answers and affirmative defenses of Respondents, the testimony of Kesselman, DiGennaro, and Verdel, the Office of Attorney Ethics has clearly and convincingly proven the violations of RPC 1.7(a)(2), RPC 1.10(a), RPC 8.4(d), by Roper and Thyne, as charged in Count One and, the violations of RPC 3.4(c) and RPC 8.4(d) by Roper as charged in Count Two.
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> [SMR15.]

The special master also took issue with respondents'

conduct during the hearing, noting that respondents "have attempted repeatedly throughout this matter to divert the focus of this hearing from the allegations against the Respondents by making unfounded and offensive accusations against [the OAE]." He identified one such example as Hill's letter accusing the OAE of engaging in unethical and potentially criminal behavior:

> Normally, I would not even dignify such scurrilous comments by addressing them, but it would be inappropriate to allow the attack on [the OAE] to go unchallenged. As the trier of fact in this matter, I have been impressed with the manner in which [OAE] has handled [the case]. I do not find any support for Ms. Hill's charge of unethical and/or criminal conduct. The record in this matter shows how Respondents and Ms. Hill were given extraordinary latitude to present their defense to the charges in the Complaint.
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> [SMR13.]

The special master concluded, "[r]espondents have adopted a strategy attacking and making unsubstantiated accusations against the Office of Attorney Ethics (OAE), the Director of the OAE, and the personnel of OAE including [the presenter], rather than accept responsibility for their actions." He also noted that respondents repeatedly accused him of bias, of prejudice, and of acting as a prosecutor because he repeatedly directed them to address the allegations in count one.

After finding respondents guilty of the allegations in the

complaint, the special master considered aggravating and mitigating factors. He accepted the character evidence but, in aggravation, found:

> In Roper's case, she lied in her Answer; she failed to attend a good part of the Hearings without proper cause; and when she was present, her conduct and outbursts were rude and disruptive. She has shown no remorse for her actions. She has shown contempt for the Rules of Professional Conduct to the point where the appropriate discipline is disbarment; and it is so recommended.
>
> Thyne has, to a lesser degree, demonstrated a lack of respect for the Rules of Professional Conduct. He lied in his Answer. He was an associate in Roper's firm at the time the actions set forth in the Complaint took place; however, this does not absolve him of his obligations under the Rules of Professional Conduct with which he failed to comply. He has displayed no remorse for his actions. The appropriate discipline is suspension from the practice of law for twelve (12) months; and it is so recommended.
>
> [SMR16.]

* * *

In a brief submitted to us, Thyne argued that he "did not receive a fair hearing from the biased special master." He alleged this bias stems from his motion for the special master's recusal. As to the special master's findings, Thyne contended that the special master, sua sponte, essentially amended the complaint by allowing the presenter to argue that the relevant

collateral litigation included the Hernandez/Diaz and the Hodge matters. Thus, Thyne was never given fair notice of the charges against him.

Thyne contended that, because collateral litigation was not dismissed as a condition of the Lederman litigation, there was no conflict of interest and no evidence that the representation of the Prudential employees was limited by his personal interests. He also claimed that his language in the memo regarding his lack of concern for the Leeds matter demonstrated his absence of any personal interest. He relied on Kesselman and DiGennaro's testimony that they had not discussed the collateral litigation directly with him to support his claim that he did not violate any RPCs.

In her brief, Roper claimed that the actual grievant is LMB, against whom she had filed a number of lawsuits. Roper maintained that the Leeds matter was filed to "deter and distract" her from continuing to assist the Prudential employees. Further, she asserted that she is the victim of selective prosecution because, despite communications made by various individuals to the OAE about LMB's misconduct, the OAE chose to investigate only respondents.

Roper also alleged that, when her clients refused to settle in the Lederman case, "the heat was turned up on [her] by the

ethics authority." She complained about the OAE's refusal to put her case on untriable status to the detriment of her clients. Instead, she contended that Rivkin Radler's excessive communications with the OAE were a "personal vendetta." She renewed her argument that this proceeding violated her rights to due process, fundamental fairness, and equal treatment.

As to the second count, Roper argued that Verdel's report, which was not in evidence, proved that she never discussed sealed documents with Bonvillain. Thus, she viewed the hearing as a "witch hunt" and disagreed with the special master that Margeotes was not credible. As a defense, she relied on her position that she was always opposed to settling with LMB and that any such decision to settle belonged to the clients. Further, she denied knowledge of Thyne's memo.

* * *

Following a de novo review of the record, we are satisfied that the special master's finding that respondents' conduct was unethical as to count one is fully supported by clear and convincing evidence. Although the record in this matter is voluminous and numerous motions were filed, the facts surrounding the allegations in the complaint are not complex and the special master reached the correct conclusion.

RPC 1.7(a)(2) provides:

> a lawyer shall not represent a client if the

> representation involves a concurrent conflict of interest. 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 In re Castiglia, 197 N.J. 465 (2008), the Court reprimanded an attorney who, among other things, engaged in a conflict of interest where (1) his representation of a client in a real estate matter was materially limited by his responsibilities to an individual with whom he had previously done business, and (2) he directed the client to execute an indemnification agreement for the attorney's personal benefit. The mortgage company had referred the buyer to the attorney. In the Matter of V. James Castiglia, DRB 08-211 (December 10, 2008)(slip op. at 4). The house that was the subject of the transaction required significant repairs and the mortgage company recommended a contractor with whom the attorney had a prior relationship. Id. at 4-5. The attorney admitted that his prior dealings with the contractor clouded his judgment, such that he did not follow up on certain issues because he knew the contractor to be trustworthy. Id. at 5. He also required the client to sign an indemnification agreement at the closing, which would hold the attorney harmless with regard to the

repairs; he admittedly did not explain the agreement to the client. Id. at 6. The attorney also prepared a RESPA that failed to include a repair credit from the seller to the buyer. Id. at 7. He was found to have violated RPC 1.3, RPC 1.4(c), and RPC 1.7(a)(2) and (b). Id. at 19. We reasoned that, with regard to the conflict of interest, the attorney's representation of the client was materially limited by his relationship with the contractor and the indemnification agreement. Id. at 13.

Here, respondents have been charged with engaging in a conflict of interest, in violation of RPC 1.7(a)(2) and RPC 1.10(a), as well as RPC 8.4(d), for bargaining collateral litigation in the Lederman litigation for their own personal interest. At the time respondents were negotiating the Lederman matter, the Hodge, Hernandez/Diaz and Leeds matters were pending. Testimony from Kesselman and DiGennaro, both of whom the special master found credible, revealed that they, as the Firm's adversaries, learned of the demands in April 2007 from Robert Weltchek, who worked with Snyder, the Firm's co-counsel in the Lederman litigation. Significantly, on May 24, 2007, Thyne sent a memorandum to Weltchek and Snyder, which stated that:

> Angela has discussed with you this collateral litigation regarding clients (Hernandez, Diaz) against whom LMB has a judgment that is currently on appeal and the collateral litigation in Colorado. While I

> am a Defendant in the Colorado litigation and couldn't give a [expletive] about it, the other suits must be dismissed as well.
>
> [Ex.C-47.]

Weltchek told Kesselman about the memorandum, but made clear that he did not endorse the Firm's position. On June 6, 2007, Roper and Kesselman spoke on the phone at a time when Kesselman believed the matter was nearing resolution. During this conversation, Roper said, "unless your clients dismiss their lawsuit against Brian Hodge . . . we are never going to settle the Lederman case," and if LMB did not agree, they "ought to get ready for the ride of [their] lives."

DiGennaro sent Roper a letter, dated June 22, 2007, accusing Roper of making an unethical request by imposing dismissal of personal lawsuits as a condition of settling her clients' claims. Roper did not deny DiGennaro's allegations. Rather, she replied with an insulting letter to DiGennaro. When Kesselman expressed concerns to Snyder about Roper's demand, Snyder assured him that it would not become an issue. On June 22, 2007, Kesselman signed a settlement agreement with Snyder on behalf of their respective clients. The settlement agreement included all but twenty to thirty of the 350 plus clients.

In September 2007, Kesselman learned that the Firm opposed the settlement. Rivkin Radler then filed a motion to enforce the

settlement, which was denied.

Thyne claims that he never made any verbal demands regarding the collateral litigation, a position supported by Kesselman and DiGennaro's testimony. We, however, agree with the special master's finding that Thyne's testimony was not credible, and that his memorandum was sufficient proof that he engaged in a conflict.

Similarly, we agree with the special master's finding that Roper was aware of the memo or directed its drafting, and that Roper had a conversation with Kesselman in which she made these demands. Further, when DiGennaro accused Roper of engaging in a conflict, Roper did not deny those claims.

Respondents attempt to cloud the facts with details of the protracted Prudential litigation. They both deny attempting to negotiate a settlement that included dismissal of the collateral litigation. As evidence of their purported unwillingness to settle the litigation involving LMB, they point out that Snyder entered the June 2007 agreement without their consent. We find these claims irrelevant. Although the settlement agreement did not contain a provision dismissing the collateral litigation, the demands were made and documented in Thyne's May 2007 memorandum and confirmed by Roper during her conversation with Kesselman.

We are not swayed by respondents' claim that LMB filed the collateral litigation in an attempt to intimidate them or weaken their ability to pursue the Lederman litigation by overloading their two-person firm resources. Although there may be truth to that suspicion, it is respondents' conduct, not the conduct of LMB, that is before us. Thus, the motivation for filing the collateral litigation or the grievance is irrelevant and does not change the fact that respondents engaged in unethical conduct.

We also find incredible respondents' denial that they were not concerned about the collateral litigation, because it had been dismissed or, in the alternative, that they knew the damages were limited to nominal damages. No one was aware that the Leeds litigation had been dismissed prior to the summer of 2013, years after the Thyne memorandum. Further, the fact that LMB was limited to nominal damages in the Leeds matter would not change respondents' obligation to defend against the claims.

Respondents repeatedly claimed that the complaint did not give them fair notice of the charges against them. Specifically, they contended that the complaint failed to identify the collateral litigation they were allegedly seeking to have dismissed. They further maintained that the proofs failed to establish any personal interest they had in the litigation. We

reject this argument.

First, as the special master found, the complaint clearly identified the Leeds matter as litigation filed against respondents personally. Thus, that case alone would support a conflict of interest charge. Second, the potential personal interest that a lawyer might have in pending litigation is obvious and needs little explanation. The interest may exist in the cost to defend, the bad publicity, the disciplinary consequences, or an adverse financial interest, such as Roper had in the Hernandez/Diaz matter.

Finally, respondents called clients both to testify about LMB's potential misconduct and to establish they had no demonstrable personal interest because respondents were zealous advocates. The special master correctly afforded little weight to this evidence. Again, the fact that LMB might have engaged in misconduct does not lessen respondents' conduct or culpability. Moreover, the clients who testified were aware of neither the details of the negotiations nor of Thyne's memorandum. Their opinions about the effectiveness of respondents' advocacy therefore, are not relevant to a determination of whether they engaged in unethical conduct here.

Therefore, we find that respondents engaged in a conflict of interest by attempting to negotiate the dismissal of

collateral litigation in exchange for the resolution of the Lederman litigation. Similar to the attorney in Castiglia, supra, respondents were exposed to liability in their case through that collateral litigation. By attempting to eliminate their exposure and the exposure of other clients in the collateral litigation, they put their own interests, as well as the interests of other clients, ahead of those of the Prudential employees. That their demands did not become part of any settlement is irrelevant. Respondents' attempt to include these provisions demonstrated that their representation of the Prudential employees was materially limited by their personal interest in resolving the collateral litigation. Thus, like the special master, we find that respondents' conduct violated RPC 1.7(a)(2), RPC 1.10(a), and RPC 8.4(d).

In respect of the second count, however, we do not agree that the evidence presented established to a clear and convincing standard that Roper violated RPC 3.4(c) and RPC 8.4(d). Verdel testified that, in a conversation that Bonvillain taped without Roper's knowledge, Roper agreed to provide him with sealed documents from the Lederman litigation, including the ADR and Fee Agreements. When Roper sent that package to Bonvillain, the protective order in the Lederman litigation remained in effect. Bonvillain, however, did not testify about

the conversation. Further, Verdel was in possession of the package that Roper purportedly had sent to Bonvillain. Bonvillain, however, had provided that package to LMB's counsel, who then forwarded it to the OAE. Again, Bonvillain failed to testify as to the documents he received from Roper. Verdel testified that Bonvillain's credibility was "questionable at best."

Thus, we decline to rely on second- and third-hand information from an individual, who secretly taped his conversation with Roper and who was not subject to cross-examination, to find by clear and convincing evidence that Roper violated RPC 3.4(c) and RPC 8.4 (d). We, therefore, dismiss those RPCs.

We recognize that the special master found that Roper admitted providing the documents to Bonvillain. He also recognized Roper's defense that she did not do so intentionally. RPC 3.4(c), however, prohibits an attorney from "knowingly disobey[ing] an obligation under the rules of a tribunal." In our view, the evidence does not clearly and convincingly establish that Roper knowingly disobeyed the sealing order. While the evidence may support the conclusion that she did provide the documents, Verdel's testimony about Bonvillain's conversation with Roper falls short of proof respondent

knowingly disobeyed the sealing order by providing documents already in the public domain.

We now address respondent's conduct at the disciplinary hearing. As previously noted, the hearing before the special master became protracted because of the number and frequency of motions Roper, Hill, and Thyne filed. Certain of these motions do not warrant lengthy discussion because the special master's reasoning and findings were fully supported by the record. We agree with the special master's findings regarding Thyne's repeated motions to sever and respondents' motions to dismiss the complaint at the conclusion of the OAE's case.

In respect of the issues raised in the remaining motions, as respondents suggest, they are constitutional in nature, and, therefore, are preserved for the Supreme Court's determination, pursuant to R. 1:20-15(h).[6] In our view, respondents' characterizations are misplaced and the special master properly denied the respondents' requests for the reasons discussed below.

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[6] Rule 1:20-15(h) states:

> Constitutional challenges to the proceedings raised before the trier of fact shall be preserved, without Board action, for Supreme Court consideration as a part of its review of the matter on the merits. Interlocutory relief may be sought only in accordance with Rule 1:20-16(f)(1).

Roper alleged in her brief to us that her right to a speedy trial was violated. As an initial matter, the right to a speedy trial exists only in respect of criminal, not attorney discipline, charges. Furthermore, one need only look at the procedural history in this matter to conclude that respondents themselves were responsible for the inordinate delay in this case. Moreover, at the same time that Roper complains about the delay in this case, she argues that her rights were violated by the special master's refusal to adjourn the matter because of the Lederman litigation. Roper cannot have it both ways.

Respondents also claim that their due process rights were violated. They contend that the complaint did not provide fair notice of the conflict of interest charges because it did not specifically identify the Hodge and Hernandez/Diaz matters as the collateral litigation. As the special master determined, the complaint specifically alleged that respondents attempted to have the Leeds litigation dismissed as part of the settlement in the Lederman matter. The complaint, thus, identified the Leeds litigation. In addition, the complaint quoted from Thyne's May 24, 2007 memo, which specifically referenced the Hernandez/Diaz litigation. Unquestionably, respondents were on notice that, at a minimum, the collateral litigation at issue was the Leeds and Hernandez/Diaz cases. Under Rule 1:20-4(b), a complaint, "shall

set forth sufficient facts to constitute fair notice of the nature of the alleged unethical conduct, specifying the ethical rules alleged to have been violated." The rule does not require that the charging paragraph detail with great specificity the allegations. The complaint need only provide sufficient facts, such as to provide fair "notice."

Although the OAE admitted that the Hodge matter was not included in the charges, it asked that it be considered as part of the respondents' entire scheme. In our view, there is nothing precluding the use of the evidence relating to Hodge in this manner. As a result, the testimony and evidence were appropriately considered.

Roper also claimed her right to counsel was violated because she was not permitted to act as co-counsel or, in the alterative, to represent herself. R. 1:20-6(e) provides:

> After the date of the pretrial conference or fixing of the first trial date, respondent's counsel may withdraw without leave of the trier of fact only upon the filing of the respondent's written consent, a substitution of attorney executed by both the withdrawing respondent's attorney and the substituted respondent's attorney, a written waiver by all other parties of notice and the right to be heard, and a certification by both the withdrawing respondent's attorney and the substituted respondent's attorney (or respondent pro se) that the withdrawal and substitution will not cause or result in delay.

Here, the request was made on the first day of the hearing. Thus, Roper could not, in good faith, certify that her counsel's withdrawal would not cause delay. As the special master noted, he permitted Thyne's counsel to withdraw because the request was made in a timely manner.

As to her request to act as co-counsel, Roper failed to produce any legal authority to support her position. Her constitutional right to counsel was not violated because she had counsel. Further, her inappropriate behavior during the hearing demonstrated her inability to properly advocate for herself and maintain the decorum required for such proceedings.

Moreover, when Roper and Hill had a "fundamental disagreement" and the special master declined to allow Hill to withdraw, he gave them an opportunity to have his ruling reviewed by the Court. Hill repeatedly threatened to do so, using the issue as a justification for her and Roper's failure to attend the September hearing dates. Although Hill claimed that she had to first obtain the transcripts, she never raised this issue with the Court.

Hill's argument that it was unfair to force her to continue in the representation because she was not being paid was not relevant to any analysis of the motion to withdraw. Although it is unfortunate that she was required to remain in the case without compensation, this cannot serve as a justification for delaying a

matter. It would not be a far leap to suggest that there are many times lawyers are obligated to complete a trial when a client owes them fees; it is a risk assumed by all trial attorneys.

Hill's repeated requests to withdraw during the course of the hearing because Roper allegedly had a better understanding of the case and had the right to represent herself also were properly denied. Hill began representing Roper at the outset of the ethics investigation. Clearly, she had a comprehensive understanding of the matter. Moreover, if she needed to become more familiar with the matter, nothing precluded her from preparing the case.

Roper maintained that the special master should not have proceeded with the hearing without her. He, however, made the record abundantly clear as to how she had failed to produce sufficient documentation to justify her absence. Before us, Roper again failed to cite any articulable reason for her failure to attend the hearing or to avail herself of the offered accommodations, except to assert that she had a medical condition. Thus, in our view, the special master appropriately proceeded with the hearing in Roper's absence.[7]

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[7] R. 1:20(c)(2)(d) makes clear that a respondent's appearance at all hearings is "mandatory," but that his or her absence "shall not delay the orderly processing of the case."

Respondents' assertion that their due process rights were violated because the special master declined to recuse himself is totally without merit. The disqualification of a trier of fact is governed by R. 1:20-6(b), which provides that "a trier of fact shall refrain from taking part in any proceeding in which a judge, similarly situated, would be required to abstain under R. 1:12-1. . . . Requests to disqualify a trier of fact shall, where possible, be made in advance of any prehearing conference; otherwise, it shall be made in advance of the initial day of hearing." Rule 1:20-6 refers to Rule 1:12-1, which states that, "[t]he judge of any court shall be disqualified on the court's own motion and shall not sit in any matter,. . . (g) when there is any other reason which might preclude a fair and unbiased hearing and judgment, or which might reasonably lead counsel or the parties to believe so."

Respondents maintain that the special master was biased and that he was acting as the prosecutor during the hearing. The record simply does not support this conclusion; there was no reasonable basis to conclude that he was unfair or biased. To the contrary, the record demonstrates that respondents and Hill did everything possible to hamper the progress of the case, which included accusing the special master of bias and of acting as a prosecutor. As explained by the special master, the

respondents repeatedly pressed him to detail the allegations of the complaint, and when he did, they accused him of being prosecutorial. Further, nothing suggested that he made a credibility determination as to Roper prior to the conclusion of the case. What was evident from the record was Roper's disrespectful and inexcusable conduct when she was present. The fact that the special master addressed this conduct had no relevance to her credibility. A review of the lengthy record demonstrated that Hill, Roper, and Thyne berated and badgered the special master during the course of the hearing and seemed to accuse him of bias any time he rendered an adverse ruling. Indeed, he gave them great latitude in many respects, leaving no basis for a claim of bias. Respondents received a fair and impartial hearing, in which the special master properly concluded that respondents engaged in a conflict of interest.

Respondents' claim of selective prosecution by the OAE Director also fails. Respondents are accountable for their own unethical conduct, without regard to purported ethics infractions by other attorneys. Respondents further complained that the disciplinary matter should have been stayed until the underlying litigation was resolved. Pursuant to R. 1:20-3(f), however, the Director is vested with the sole discretion to pursue a matter when there is related pending litigation. In an

April 2, 2013 letter, the Director addressed respondents' multiple requests for a stay. To the extent that respondents claim that the Director abused his discretion, those constitutional challenges are reserved for the Court's consideration.

For these reasons, respondents were properly found to have violated all the charges set forth in count one, specifically, RPC 1.7, RPC 1.10 and RPC 8.4(d). Thus, we turn to the appropriate quantum of discipline.

It is well-settled that a reprimand is the appropriate level of discipline for a conflict of interest, absent egregious circumstances or serious economic injury to the clients. In re Berkowitz, 136 N.J. 134, 148 (1994). Reprimands have been imposed on attorneys who, in addition to engaging in conflict-of-interest situations, displayed other forms of unethical behavior. See In re Kraft, 167 N.J. 615 (2001) (reprimand for attorney who stipulated that he failed to communicate with clients in four separate matters: in all four matters, the attorney exhibited lack of diligence; in one matter, the attorney violated RPC 1.4(b) by failing to clearly explain to the client his legal strategy, thereby precluding her from making an informed decision about the course of the representation and the pursuit of her claims; in one of the

matters, he failed to prepare a written fee agreement with the client; and in one of the matters, he was found guilty of a conflict of interest by failing to explain to the client the advantages or disadvantages of pursuing her case jointly or independently of the client's co-worker, who was also represented by the attorney); In re Castiglia, 158 N.J. 145 (1999) (on a motion for discipline by consent, the Court agreed that a reprimand was the appropriate discipline for attorney who repeatedly failed to set forth, in writing, the basis or rate of his legal fee, engaged in a conflict of interest by simultaneously representing various parties with adverse interests, and witnessed the signature on a deed and affidavit of title, even though the documents had been signed outside of his presence).

A respondent's lack of civility and disrespectful conduct toward the OAE and a special ethics master can be viewed as an aggravating factor that requires enhanced discipline. See, e.g., In re Rochman, 202 N.J. 133 (2010) (the attorney's combative behavior and "scorched earth" tactics at the ethics hearing was considered an aggravating factor, justifying increased discipline); In re King, 198 N.J. 448 (2009) (censure imposed based, in part, on attorney's disrespectful conduct at the disciplinary hearings).

Respondent Thyne has a prior reprimand but the misconduct in this matter pre-dates the imposition of that discipline. Thus, we determine to impose a reprimand on Thyne for his misconduct.

Roper is guilty of having violated RPC 1.7(a)(2), RPC 1.10(a), and RPC 8.4(d). She, however, does not have an ethics history. In aggravation, we considered that she was the partner in charge, and, thus, more responsible for the misconduct. Even so, but for her conduct during the hearing before the special master, we would have imposed a reprimand.

Respondent's conduct during the hearing, however, was egregious. She failed to appear for the majority of hearing dates, despite her clear obligation to do so. When she was present, she was disrespectful and disruptive, and engaged in repeated outbursts. Further, both she and her counsel defied the special master's specific order that they appear for the final hearing dates. Although Roper was directed to appear and was even given a second opportunity, she chose not to do so. She made a conscious and ill-considered decision to disobey a court directive. The proper course would have been to attend the hearing, and note her continuing objection. She chose instead to flout the special master's authority and thus, the authority of the Court. For this significant aggravating factor, we

determine to impose a censure.

Member Clark did not participate.

Member Gallipoli voted for a three-month suspension for respondent Roper.

We further determine to require respondents 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
Ellen A. Brodsky
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Angela M. Roper
Docket No. DRB 16-067

Argued: September 15, 2016

Decided: February 1, 2017

Disposition: Censure

Members	Censure	Three-month Suspension	Did not participate
Frost	X		
Baugh	X		
Boyer	X		
Clark			X
Gallipoli		X	
Hoberman	X		
Rivera	X		
Singer	X		
Zmirich	X		
Total:	7	1	1

Ellen A. Brodsky
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Kenneth S. Thyne
Docket No. DRB 16-068

Argued: September 15, 2016

Decided: February 1, 2017

Disposition: Reprimand

Members	Reprimand	Recused	Did not participate
Frost	X		
Baugh	X		
Boyer	X		
Clark			X
Gallipoli	X		
Hoberman	X		
Rivera	X		
Singer	X		
Zmirich	X		
Total:	8		1

Ellen A. Brodsky
Chief Counsel