SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket Nos. DRB 16-205 and DRB 16-220
District Docket Nos. XII-2014-0040E
and XIV-2014-0699E

IN THE MATTER OF	:
JEFFREY R. POCARO	:
AN ATTORNEY AT LAW	:

Decision

Argued: November 17, 2016

Decided: March 1, 2017

Glen J. Vida appeared on behalf of the District XII Ethics Committee in DRB 16-205.

Jason Saunders appeared on behalf of the Office of Attorney Ethics in DRB 16-220.

Respondent appeared pro se.

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

The above-referenced matters were before us on separate recommendations for discipline filed by the District XII Ethics Committee ("DEC"). The matters were consolidated for the purpose of imposing a single form of discipline.

In DRB 16-205, the seven-count complaint charged respondent with violations of RPC 1.4, presumably (b) (failing to keep a

client reasonably informed about the status of the matter); RPC 1.4(c) (failing to explain a matter to the extent reasonably necessary to permit the client to make an informed decision about the representation);[1] RPC 1.6(a) (improperly revealing confidential information); RPC 1.7(a) (engaging in a concurrent conflict of interest); RPC 1.8(b) (using information relating to the representation of one client to the disadvantage of the client unless the client after full disclosure and consultation gives informed consent); RPC 1.8(f) (accepting compensation for representing a client from someone other than the client); RPC 1.9 (representing a client in a matter after representing another client in the same or substantially related matter in which the clients' interests are materially adverse, unless the former client gives informed written consent); RPC 5.4(c) (permitting a person, who pays the lawyer to render legal services for another, to direct or regulate the lawyer's professional judgment in rendering such legal services); RPC 8.4(c) (engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation); and RPC 8.4(d) (engaging in conduct prejudicial to the administration of justice). The DEC recommended a three-month suspension.

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[1] Although the complaint cited the language of both RPCs, it listed only RPC 1.4(c).

In DRB 16-220, the complaint charged respondent with violations of RPC 5.5(a)(1) (unauthorized practice of law), and RPC 8.4(d) (conduct prejudicial to the administration of justice) for violating R. 1:20-16 (failing to comply with a Supreme Court Order) and R. 1:20-20 (prohibited actions of suspended attorneys). The DEC recommended a two-year suspension for these violations.

For the reasons set forth below, we determine to impose a three-year suspension.

Respondent was admitted to the New Jersey bar in 1982. He maintains a law office in Fanwood, New Jersey.

In 1995, respondent received a one-year suspension for violating RPC 8.4(b) (criminal conduct) and RPC 8.4(c) (misrepresentation). In that matter, respondent had misrepresented that a racehorse was not encumbered by a bank lien, in order to obtain a loan for a client through a "sale lease back" transaction. In re Pocaro, 142 N.J. 423 (1995). Respondent was charged in a federal complaint with a "scheme to defraud another person by use of interstate wire," 18 U.S.C. 1343, and entered into a "deferred prosecution program." As part of the deferred prosecution agreement, respondent was required, among other things, to repay funds to his client, report the matter to the Office of Attorney Ethics (OAE) and, if so directed by the U.S. Pretrial Services Office, to continue participation in Gamblers' Anonymous.

Respondent blamed his disease of compulsive gambling for engaging in the conduct "to reduce the crushing debt burden that the disease had brought about." Mitigating factors advanced by respondent were his financial burden and the measures he had taken to combat his gambling problem. He was reinstated to practice law in December 1996. In re Pocaro, 146 N.J. 576 (1996).

In 2006, respondent was censured for misconduct in a civil rights action, that took place in late 1990. He was found guilty of gross neglect, lack of diligence, failure to expedite litigation, and failure to communicate with a client. In imposing discipline, we considered that, once his employer was suspended from the practice of law, respondent was left with the responsibility of overseeing 400 cases; that only one client matter had been involved; that he admitted his wrongdoing; and that he appeared truly remorseful for his conduct. In re Pocaro, 187 N.J. 411 (2006).

In 2013, respondent received another censure for requesting that his adversary in a lawsuit withdraw an ethics grievance filed against him in exchange for his forbearance from instituting a defamation action against the adversary's client, a violation of RPC 8.4(d). We determined that the censure was warranted due to respondent's significant ethics history and his propensity to

violate the Rules of Professional Conduct. In re Pocaro, 214 N.J. 46 (2013).

Finally, in 2014, respondent was suspended for three months for his misconduct in one client matter in which he was retained to recoup damages for injuries a horse trainer had inflicted on a stallion while training it. In re Pocaro, 219 N.J. 320 (2014). In that matter, he failed to provide the client with a writing setting forth the basis or rate of his fee; engaged in lack of diligence and failed to expedite litigation; failed to communicate with the client by failing to inform her that he had not conducted adequate discovery, had not obtained an expert for the case, and was not prepared for trial; made misrepresentations to the client that he had filed various motions to adjourn the trial, to extend discovery, and to have the judge recuse himself, and misrepresented the judge's comments about the case, which was also deemed conduct prejudicial to the administration of justice; and failed to obtain the client's consent to file an appeal from a judge's order, which served to further delay the case. In assessing the proper quantum of discipline for respondent's violations, we considered his significant ethics history; his failure to learn from prior ethics matters; and his prior misrepresentations. In the Matter of Jeffrey R. Pocaro, DRB 14-009 (June 24, 2014) (slip op. at 22-23).

Respondent was reinstated on January 28, 2015. In re Pocaro, 220 N.J. 346 (2015).

DRB 16-205

The panel chair in this matter signed an order sealing the entire record to protect the grievant's interests as a confidential informant. Therefore, we have omitted the grievant's name from this decision.

Grievant was a licensed New Jersey horse trainer. At the time of the DEC hearing, he was fifty-four years old and had worked with horses since he was seventeen years old. Grievant held a trainer's license from 1985 until his license was suspended.[2] His most recent suspension resulted from his association with an individual who owned a horse, which grievant trained.[3]

Owner was a longtime client of respondent. They met through owner's acquaintance with respondent's father, who also was an attorney. Owner and respondent's father had been partners in the ownership of a horse.

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[2] Grievant's license was suspended in 2000 or 2001, due to drug convictions, discussed below. After successfully completing drug rehabilitation, he was granted a provisional license.

[3] To protect grievant's identity, we also refrain from using the name of the owner, and refer to him, instead, as "owner" throughout this decision.

In April 2009, on a race day, owner injected his horse with an illegal substance. Grievant claimed that he was not present in the barn at the time of the injection, but was out "letting his horses run." Owner disputed grievant's assertion, stating that grievant was in the barn at the time he gave the injection, cleaning a stall about six feet away, and was aware that owner planned to inject the horse.[4]

An investigator from the New Jersey Racing Commission (racing commission) was in the barn at the time and observed owner giving the horse the injection. As a result of the illegal injection, the racing commission charged both owner and grievant with violations of the racing commission's code of conduct. Respondent represented owner at the racing commission hearing. Grievant appeared pro se. They were each suspended for one year and grievant was fined $2,500.

According to a joint stipulation of facts, following the suspensions, grievant informed owner "of a claim for damages as a result of his suspension." Owner asserted that he felt partially responsible for grievant's suspension and, thus, decided to pay grievant. Owner directed respondent to prepare a release, which grievant signed. Pursuant to the release, in

[4] Owner, who was in Florida at the time of the DEC hearing, testified via telephone.

exchange for owner paying grievant $15,000, grievant released owner from any claims "including those of which I am not aware and those not mentioned." Owner claimed that he also paid grievant's fine twice, because grievant had spent the first sum he had given him for purposes other than the racing commission fine.

Owner's license was restored after his year-long suspension. The racing commission denied grievant's license restoration application "because his prior license was a conditional license based on an agreement [grievant] signed with the NJ Racing Commission on October 13, 2005."

After grievant's application was denied, he told owner that he had to either fix the problem or compensate him for his loss. On June 15, 2011, grievant filed an appeal of the denial of his license with the Office of Administrative Law (OAL). Owner agreed to pay respondent's $2,500 legal fee to represent grievant in the appeal. Respondent never gave grievant a retainer agreement. Respondent believed that such a writing was unnecessary, because grievant was not paying the fee.[5] Moreover, respondent testified that, as a matter of practice, he did not

[5] The complaint did not charge respondent with having violated RPC 1.5(b) (failure to set forth in writing the basis or rate of the fee).

provide retainer agreements in equine matters. Respondent added that he charges a flat $2,500 fee for appearances in administrative hearings. At the time respondent represented grievant on his license restoration, respondent also was representing owner in an unrelated collection matter.

At his first meeting with respondent, grievant told respondent that, if he did not get his license reinstated, he intended to sue owner because "$15,000 did not account for a life worth of being suspended." Grievant believed that owner had taken his livelihood from him, work that he had been doing since he was seventeen. At that initial meeting, respondent asked grievant to execute a document agreeing that he would not sue owner. Grievant refused to do so. Instead, he threatened to file ethics charges if respondent did not represent him.

According to grievant, when he first met with respondent, he did not like respondent or his attitude and did not want respondent as his lawyer; "he wanted to "knock [respondent's] teeth in." Despite grievant's dislike for respondent, he thought respondent could help him and, in any event, he was not in a position to retain another lawyer because his OAL hearing was fast approaching and he did not have the funds to retain another attorney. In addition, respondent convinced him that he could

"get the job done." Thus, grievant testified, he had faith in respondent, even though he did not like him.

Respondent informed owner that he would have to execute a conflict of interest waiver. Owner drafted one himself and signed it, "purporting to waive any conflict of interest."

Respondent never advised grievant to confer with another lawyer about a potential conflict of interest because, grievant claimed, respondent was "broke and hungry for the 2500 from [owner]." Respondent maintained that, even though he had not drafted a conflict of interest waiver, he had asked grievant to sign one. Although grievant refused, respondent continued to represent grievant because, respondent stated, "to win this case would re-establish me after my recent suspension as the go-to guy in the racing industry." Respondent added:

> I want to be the engineer that drove the train that got [grievant] back his trainer's license or the groom's license because the man was nearly in tears in my office about going back. I've been out of work for so long. This is all I know how to do and I said, yes and you have a promise of a job. Nick Serta called me before I even got involved in this case and said, Jeff, can you help [grievant] and I said tell [grievant] to call [owner] because I can't do anything unless [owner] gives his blessing. [Owner] gives his blessing. [Owner] called me and said I'll give you my blessing and I'll pay for it.
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> I didn't see any kind of a conflict because [owner] wasn't on that train. He was getting

> either phone calls or an occasional e-mail perhaps from me saying what the status was.
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> [2T93-25 to 94-16.][6]

Respondent remarked further that grievant's case would bring him notoriety and would reestablish him as the "top horse racing lawyer" in the state.

Respondent did not concede the inherent conflict of interest based on owner's and grievant's different accounts of what had occurred in the barn. Respondent asserted that owner's case was over and grievant's appeal would rest on grievant's obtaining "brownie points" for acting as a confidential informant to the racing commission (discussed below). Respondent acknowledged, however, that he would not be able to question grievant about what had transpired in the barn or even permit him to testify at the OAL hearing because it would present a conflict of interest. Respondent maintained that, if grievant cooperated with him and went along with his recommendations, a waiver of a conflict of interest would have been unnecessary.

With grievant present in his office, respondent called owner, on speaker phone, to discuss grievant's case, because owner "required" respondent to keep him "in the loop" about

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[6] 2T denotes the transcript of the hearing before the DEC on November 19, 2015.

grievant's case. Although grievant was not concerned about respondent keeping owner informed about his case, he believed that respondent was more interested in taking care of owner than him because owner is a multimillionaire who often lent respondent money. Owner denied loaning money to respondent.

In connection with the OAL hearing, grievant provided respondent with all of his documentation, including an October 13, 2005 letter of cooperation with the racing commission investigative unit. The October 13, 2005 letter stated that grievant agreed to accept a conditional stable employee license[7] under the condition that he (1) continue to cooperate with the New Jersey State Police Racetrack Unit; (2) cooperate with the racing commission's investigative unit; (3) immediately notify both of any arrests or charges criminal or civil brought against him in any jurisdiction; and (4) submit to random drug testing. This document was executed in connection with grievant's confidential informant status with the racing commission.

Although grievant provided the letter to respondent, he did not authorize him to give it to anyone because, as a confidential informant, his life could be at risk if anyone discovered his cooperation with the racing commission.

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[7] According to respondent, a stable employee license is synonymous with a groom's license.

Prior to the OAL hearing, respondent recommended that grievant withdraw his appeal and, instead, apply for a groom's license "based on the fact that the NJ Racing Commission had permitted [grievant] to work as a groom without a groom's license;" and if his application for a groom's license were denied, he could request a hearing before the OAL.

Respondent claimed further that, before the OAL hearing, he explained to grievant a complex process that he had undertaken with two other clients to restore their licenses, which included securing an expungement of their criminal records. At the DEC hearing, respondent described at length what he had done for those clients. He claimed further that he had informed grievant it could take three or four years until his license would be reinstated and the process could involve administrative hearings, four-way negotiations with racing commission officials to earn "brownie points" for the work he had performed as a confidential informant, and that grievant might have to take his case before the Appellate Division and perhaps even the Supreme Court.

Although respondent maintained that grievant was willing to undergo such a process, he later asserted that grievant did not have the patience to do so. Respondent admitted, however, that he did not have a good "track record" with the Appellate

Division, that the deck was stacked against grievant, unless he was able to negotiate with the racing commission, and that the appellate process would be costly. Respondent claimed that he never attempted to negotiate with the racing commission on grievant's behalf because, by that point, grievant had threatened to sue him.

At the May 13, 2014 OAL hearing, based on respondent's advice, grievant withdrew his appeal of the denial to restore his trainer's license, in order to apply for a groom's license. According to grievant, in his and his father's presence, respondent specifically stated that grievant would not get his trainer's license back and instructed grievant to drop the appeal "and I'll get you a groom's license." It was clear to grievant that he would at least obtain a groom's license. He believed that getting "something is better than nothing."

Grievant's father was also present at the OAL hearing. He testified that, before the hearing began, respondent had spoken to Deputy Attorney General (DAG) Susan Sharpe, who represented the racing commission. Respondent relayed the DAG's position that, even if the administrative law judge (ALJ) reinstated grievant's trainer's license, the racing commission would overrule such a determination. For that reason, respondent suggested that grievant apply for a groom's license instead,

because the racing commission would be "receptive" to granting it, or would look favorably on an application for a groom's license, if grievant dropped his appeal. Although grievant's father did not recall respondent's exact words, he maintained that that was his and his son's understanding from their conversation with respondent. Based on respondent's advice, grievant withdrew his appeal, expecting to earn a living as a groom.

DAG Sharpe testified that, during a prehearing conference before ALJ Ronald W. Reba, the attorneys determined that grievant could withdraw his appeal for a trainer's license and apply for a groom's license. She, however, made no promises that a groom's license would be viewed more favorably. Thereafter, respondent spoke to grievant. Sharpe recalled that, when they reconvened in the ALJ's chambers, grievant had agreed to withdraw his appeal and to apply for a groom's license. Later, on the record, respondent questioned grievant to establish that he had not been pressured to withdraw his appeal. Sharpe entered on the record that the racing commission had made no promises in return for grievant's withdrawal of his appeal. The relevant portions of the voir dire transcript are as follows:

> [Respondent]: And the option we discussed is for you to . . . apply for a groom's license.

[Grievant]: Yes.

[Respondent]: You understand that if you're denied [a groom's license] you have a right to file an appeal of that denial and come back and have a full and complete hearing on that issue.

[Grievant]: I understand that.

. . . .

[Respondent]: So you've done this as your [own] free will [sic].

[Grievant]: Yes.

. . . .

[Sharpe]: The Racing Commission just wishes to put on the record that it has made no representation as to whether or not any subsequent application for a groom's license for [Grievant] will be successful.

[Ex.C-17;5-7 to 6-18.]

Grievant accused respondent of making misrepresentations to him. He insisted that, regardless of the above-quoted portion of the transcript of the proceedings before the ALJ, respondent had assured him that he would receive a groom's license, not merely that he could apply for one. He had not objected to the DAG's comments because he had faith in respondent. He "didn't know that [respondent was] a scam artist and no good."

Respondent, in turn, characterized grievant as a "pathological liar" for claiming that he had made misrepresentations to grievant about obtaining the license.

The racing commission denied grievant's groom's license application based on his "prior suspension and the conditions imposed when he was granted a conditional license". Upon receipt of this news, grievant became angry, threatened respondent and owner with lawsuits, and accused respondent of being a liar. He admitted that he had threatened to sue respondent on multiple occasions. By letter dated June 3, 2014, respondent informed grievant that, if he threatened to sue him or owner again, respondent would cease representing him.

On June 6, 2014, while respondent was at the Monmouth County Courthouse on another case, grievant attempted to serve him with a summons and complaint for a lawsuit against owner. This occurred while respondent was still contemplating how to resolve grievant's licensing situation. Respondent refused to accept service on owner's behalf. Grievant then threatened to sue respondent next. Respondent replied that he would no longer represent grievant and sent him a confirming letter to that effect. Respondent then notified owner about grievant's lawsuit.

On that same day, respondent informed the racing commission that, because of grievant's lawsuit against owner, respondent would no longer be able to represent grievant in his licensing matter.

Grievant asserted that Mr. A.,[8] for whom he worked, but who was not an attorney, helped him file the lawsuit against owner. That lawsuit was dismissed. However, in 2015, owner paid grievant an additional $15,000, determining to give the money to grievant, rather than to lawyers. Owner, thus, had paid grievant a total of $30,000, and paid attorneys' fees to, purportedly, three attorneys who had attempted to help grievant with his licensing issue (two attorneys before respondent was retained). Owner made the payments because he felt partially responsible for grievant's license being revoked. Although grievant later approached a lawyer about suing respondent for malpractice, the attorney declined to represent him because respondent did not carry malpractice insurance.

Respondent attempted to impeach grievant's credibility by questioning him about his earlier drug convictions and incarcerations and about his incorrect testimony in respect of the dates of his conviction and his length of incarceration. Grievant asserted that he had been mistaken about the dates and had made a mistake on his racing commission application because he had not had copies of the judgments of conviction available

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[8] Because disclosure of Mr. A's identity might also render grievant identifiable, we have redacted his name from this decision.

when he filled out the application. Grievant explained that his license previously had been suspended in 2000, but after he completed drug rehabilitation and passed all required drug testing, he had been granted a provisional license. Grievant's jail time had been reduced because he was doing undercover work for the police.

The facts relating to respondent's alleged improper disclosure of confidential information are as follows. Respondent represented the defendant in the above-mentioned matter filed in Superior Court, Morris County, by Mr. A. Respondent testified at length about Mr. A's vendetta against him because of their prior legal entanglements.

Grievant, who then worked for Mr. A, maintained that he had served papers on Mr. A's behalf on several occasions and had served papers on the defendant at his home in connection with Mr. A's lawsuit. The defendant denied having been served with the summons, the complaint, or the case information statement in the matter or having received Mr. A's application for a default judgment. He added that grievant could not have served him on the date claimed because he was at a surgical center at the time.

Respondent believed that grievant had not served the defendant but, instead, that Mr. A had committed a crime by

forging grievant's name on the affidavit of service. He asserted that he had numerous papers signed by both grievant and Mr. A in his files, compared Mr. A's signature to the signature on the affidavit of service, and concluded that Mr. A had signed grievant's name on the document. Respondent added that, because the affidavit did not comply with the Court Rules, it was a "phony" affidavit. He was surprised that the court had relied on the affidavit of service to enter a default against defendant.

In turn, grievant testified that he had signed the affidavit of service, but was unable to recall the location of defendant's house, identifying characteristics of the property, or other details relating to having served the papers.

On June 23, 2014, respondent sent a letter to the Morris County Prosecutor's Office, alleging that a forgery had been committed and that a number of documents that respondent attached to the letter contained grievant's signature, which did not match grievant's signature on the affidavit of service. A review of grievant's signatures contained in the record revealed that, although all of them were somewhat different, none of them resembled Mr. A's signatures, which were no more than squiggles. Attached to respondent's letter to the prosecutor was grievant's confidential letter of cooperation with the racing commission, which respondent had enclosed without grievant's consent.

Respondent disagreed that the letter divulged the fact that grievant was a confidential informant.

According to respondent, because he believed that the affidavit had been forged, he had an obligation, as a lawyer, to inform the authorities. He, however, did not consider excising any information from the file that he had sent.

As to the investigation into the forgery, grievant testified that neither the Wall Township Police Department nor the Morris County Prosecutor's Office asked him whether he had served defendant; they asked him only to verify that it was his signature on the affidavit, which he did. The Wall Township Police concluded that grievant was not involved in any wrongdoing.

In respect of mitigation, respondent testified about his father's pride in him when he passed the bar examination because the Law Journal had published his exam answers. Respondent maintained further that he had received an offer for a law clerk position, which was revoked when the judges for whom he was to clerk became aware of his involvement in a lawsuit that might preclude him from clerking for them. He, therefore, went to work for his father and became "a horse attorney." A published opinion from one of his cases brought him notoriety and many clients.

Respondent testified that during his period of suspension, he worked as a car salesman. His father was so ashamed of him that they did not "affiliate" for three years. Presumably, after his reinstatement, when his father was unable to find a suitable attorney to replace him, he rehired respondent.

Respondent's father passed away in 2006 from "Lou Gehrig's disease." After respondent was tested, he learned that he does not have the disease.

Respondent asked the DEC to dismiss the case or to impose either an admonition or a reprimand.

* * *

The DEC did not find credible grievant's testimony (1) that respondent had told him that the racing commission would look favorably on his application for a groom's license; (2) that he signed the affidavit of service in the matter Mr. A filed against defendant and served it on defendant; and (3) that he was not present when owner injected the horse or was not aware that he was doing so. The DEC found owner's telephone testimony to the contrary to be more credible.

The DEC observed that, despite grievant's numerous threats to respondent that he would sue owner, respondent continued to represent grievant, and that respondent did not press grievant to execute a waiver of the conflict of interest because he wanted to

win the case to re-establish himself as the preeminent horse racing attorney in New Jersey.

The DEC did not find credible respondent's testimony regarding the date he ceased representing grievant, because it was only in his June 6, 2014 letter that he informed the racing commission that he no longer represented grievant.

Based on the transcript of the DAG's comments that she made no representations about the outcome of an application for a groom's license, the DEC found respondent not guilty of (1) failing to keep grievant reasonably informed about the status of the matter or failing to explain a matter to the extent reasonably necessary to permit him to make informed decisions about the representation (RPC 1.4(b) and (c)); and (2) failing to accurately convey information presented by the ALJ and DAG (RPC 8.4(c) and (d)) (count six).

Although the DEC noted that respondent had failed to consider that he was revealing confidential client information to the prosecutor's office, it did not find a violation of RPC 1.6, improperly revealing confidential information (count two). Citing subsection (b)(2), which creates an exception when an attorney divulges information to prevent the perpetration of a fraud, the panel noted:

> Since the papers filed with the court included what the Panel concludes was a false affidavit of service filed on behalf of a plaintiff in furtherance of a lawsuit seeking substantial

> damages against a defendant, the Panel finds that, despite Respondent's motive to harm his recent, former client, the information was also conveyed to prevent "substantial injury to the financial interest of another" and to prevent an effort to "perpetrate a fraud upon a tribunal."
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> [HR13.][9]

Despite the DEC's finding that respondent did not violate RPC 1.6, it determined that respondent displayed "malice or bad intent" against grievant when he provided the Morris County Prosecutor's Office with information detrimental to grievant's interests, after concluding that he had committed a criminal offense.

In respect of count three, the DEC found respondent guilty of RPC 1.8(f)(2), citing In re State Grand Jury Investigation, 200 N.J. 481 (2009), which requires that six conditions be met before an attorney can accept payment from a third party. One such condition requires that the attorney and third-party payer have no current attorney-client relationship. Respondent, however, admitted having a current attorney-client relationship with owner at the time he paid grievant's fee. Thus, the DEC also found a violation of RPC 1.7 based on respondent's failure to

[9] HR refers to the April 6, 2016 hearing panel report.

obtain grievant's informed written consent to the conflict (count three).

The DEC did not find respondent guilty of violating RPC 1.8(b) or RPC 1.9, counts four and five, respectively.

The DEC did not find a violation of RPC 5.4(c) because it did not believe that respondent's professional judgment had been influenced by owner's payment of grievant's counsel fees (count seven) and found that the violation of RPC 1.8(f) was duplicative of the charge in count three, for which respondent had already been found guilty. The DEC, therefore, dismissed the charge.

In assessing the appropriate discipline, the DEC considered respondent's extensive ethics history and his lack of remorse or acknowledgment of wrongdoing. Two panelists, thus, recommended the imposition of a three-month suspension.

The third panelist recommended an admonition, finding that respondent's violation of RPC 1.8(f) was technical in nature and that, if respondent had obtained a written waiver, there would not have been a violation of RPC 1.8(f) at all. This panelist found that respondent's technical violation of the Rule was not undertaken in a "malicious, deceitful or fraudulent manner but rather provided a complete competent representation to a malicious, deceitful, previously convicted felon." Moreover,

this panelist determined that respondent's lack of remorse should not be considered, because respondent had no reason to be remorseful. The panelist concluded that respondent had represented grievant "with intellectual honesty and vigor," for which he should be commended.

By letter dated October 21, 2016, respondent reiterated the sentiments of the dissenter and urged that we adopt the minority view and impose an admonition, despite his disciplinary record.

* * *

Following a de novo review of the record, we are satisfied that the DEC's conclusion that respondent was guilty of unethical conduct is supported by clear and convincing evidence. We are unable, however, to agree with all of the DEC's findings.

A determination on the charges in counts one (RPC 1.4(b) and (c)) and six (RPC 8.4(c) and (d)), rests on the credibility of the witnesses. The DEC, which had the opportunity to observe the witnesses during their testimony (with the exception of owner who testified telephonically) found owner's testimony believable and, in some respects, both respondent's and grievant's testimony unbelievable.

The DEC pointed out that grievant is a convicted felon. However, respondent, too, has had an encounter with the law as well as multiple brushes with ethics authorities. This is his

fifth matter before us. Respondent received a one-year suspension in 1995 for engaging in criminal conduct. In two of his matters, he was also found guilty of making misrepresentations and engaging in conduct prejudicial to the administration of justice. Most recently, in 2014, he was suspended for three months for, among other things, making misrepresentations to his client concerning comments that a judge had made about the case. Thus, we do not view respondent's testimony to be particularly credible.

Grievant and his father testified unequivocally and forcefully that they believed that, if grievant withdrew his OAL appeal, the racing commission would look favorably on his application for a groom's license. Indeed, respondent pointed out that, under grievant's cooperation agreement, the racing commission already had granted him a provisional license. Clearly, respondent did not properly convey to grievant the strong possibility that he would be facing a lifetime ban from racing, an industry in which he had earned his living for more than thirty years.

Respondent's explanation for advising grievant to withdraw his appeal does not ring true. Respondent claimed that he advised grievant that, if the groom's license were denied, they could appeal the determination to the OAL, the Appellate

Division, and the Supreme Court. In the alternative, respondent, who had a good rapport with the racing commission and considered himself to be one of the preeminent horse racing attorneys in the State, could arrange a four-way conference with racing commission officials to convince them to reinstate grievant's license by earning "brownie points," based on his work as a confidential informant. Respondent, however, claimed that grievant did not have the patience to wait three or four years for his license to be restored, and that the process would be expensive. Who would pay for respondent's time and effort? Certainly grievant did not have the resources to fund any of the avenues respondent suggested, and owner was not likely to offer to pay respondent, in light of grievant's threats to sue owner.

In this context, it is clear to us that respondent failed to provide grievant with sufficient information to make an informed decision about the representation, a violation of RPC 1.4(c). The evidence does not, however, establish a violation of RPC 1.4(b), which we dismiss. Because there is also no clear and convincing evidence that respondent affirmatively told grievant that he would definitely receive a groom's license, we also dismiss the charges of RPC 8.4(c) and (d) in that regard.

Respondent was charged with many incarnations of the conflict-of-interest rules (counts three, four, and five). From

the outset, respondent should have refused to represent grievant. At their initial meeting, grievant threatened to sue owner if his license were not restored and to sue respondent as well. Moreover, respondent admitted that he could not represent grievant without owner's approval. Respondent clearly recognized that the situation presented a concurrent conflict of interest because he asked grievant to execute a waiver that he would not sue owner, regardless of any claims known or unknown that might later arise, in exchange for $15,000. More importantly, respondent claimed that grievant refused to sign a conflict-of-interest waiver. Notwithstanding grievant's refusal, respondent undertook his representation.

RPC 1.7(a) prohibits a lawyer from representing a client if the representation involves a concurrent conflict of interest. Such a conflict exists if the representation of one client will be directly adverse to another client or if the representation of one client is materially limited by the lawyer's responsibilities to another client. The lawyer may undertake the representation if the client gives informed consent, confirmed in writing, after full disclosure and consultation. The lawyer, however, must reasonably believe that he or she will be able to provide competent and diligent representation to each affected client, regardless of any waiver.

Owner's and grievant's interests were in direct conflict with one another and respondent clearly put owner's interests above those of grievant's. When grievant refused to sign a waiver, respondent immediately should have declined to represent him. Perhaps, driven by either dire finances or ego, respondent proceeded with the representation. In this regard, he is guilty of a conflict of interest (RPC 1.7(a)).

Respondent is also guilty of violating RPC 1.8(b), which prohibits an attorney from using information relating to the representation of one client to the disadvantage of another client, unless the client gives consent after full disclosure and consultation. Here, respondent acceded to owner's requests to be kept informed about grievant's matter, and disclosed to owner grievant's intent to sue him.

RPC 1.9 prohibits the representation of one client in the same or a substantially related matter in which the present and former client's interests are materially adverse. The complaint charged, in count five, that respondent improperly utilized information he learned about grievant against him and in favor of respondent's new client, defendant. Respondent's conduct in this regard falls more properly under RPC 1.6 (confidential information). The information used by respondent in the suit Mr. A filed against defendant was adverse to Mr. A, who was not

respondent's client. Thus, we dismiss count five as inapplicable to the facts.

Respondent, nevertheless, is guilty of revealing information relating to a client, grievant, without obtaining that client's consent, a violation of RPC 1.6. Respondent claimed that he thought the crime of forgery had occurred on an affidavit of service in connection with the representation of his client, the defendant. A substantial default judgment had been entered against defendant. He claimed, however, that he had not been served with any of the documents in that lawsuit. Rather than simply move to reopen the default, respondent forwarded information to the Morris County Prosecutor's Office to launch an investigation into the matter, which affected both grievant, his client, and Mr. A. Included among the mass of papers that respondent forwarded to the prosecutor was the confidential informant document.

The DEC was convinced that grievant's signature on the affidavit of service was forged. Our review of the legible documents does not lead us to that same conclusion. RPC 1.6(a) states in relevant part that a lawyer shall not reveal information relating to the representation of a client unless the client consents. RPC 1.6(b) provides that an attorney shall reveal such information if the lawyer "reasonably believes" it

is necessary to prevent the client or another person: (1) from committing a criminal, illegal or fraudulent act that is likely to result in substantial injury to the financial interest of another; or (2) to prevent the perpetration of a fraud on a tribunal.

As stated above, respondent did not obtain grievant's consent to forward the confidential information to the prosecutor. Moreover, respondent did not "prevent" an alleged fraud or injury to the financial interests of another. The damage or injury, if any, already would have occurred before respondent forwarded the confidential information. Thus, respondent's conduct appears to us to be more of a tactic to gain an advantage in representing his client, the defendant.

The prosecutor's office found no wrongdoing in connection with Mr. A's lawsuit, rendering respondent's claim that turning over the confidential information fell within the exceptions of RPC 1.6 questionable. Furthermore, even if respondent had a reasonable belief that what he did was proper, he failed to take any measures to protect grievant's interests, such as excising information from the confidentiality agreement or relying on other documents he had in his possession. His obligation to grievant to maintain confidential information under RPC 1.6(a) was not extinguished by the dissolution of their attorney-client

relationship. As the majority of the hearing panel found, respondent's action in this regard displayed "malice or bad intent" against grievant.

RPC 1.8(f) prohibits a lawyer from accepting compensation for representing a client from one other than the client (1) unless the client gives informed consent; (2) there is no interference with the lawyer's independence or professional judgment or with the lawyer-client relationship; and (3) information relating to representation of a client is protected as required by RPC 1.6 (count three). Similarly, RPC 5.4(c) prohibits a lawyer who accepts payment from someone other than the client to permit the payer to direct or regulate the lawyer's professional judgment in rendering legal services (count seven).

We disagree with the DEC's determination to dismiss these charges and, instead, find that respondent violated these rules. During the course of the representation, owner required that he be "kept in the loop." Owner had a vested interest in the outcome of grievant's case and, in fact, demanded a waiver from grievant to try to insulate himself from further monetary damages. After grievant was denied a groom's license, and while respondent was still representing grievant, grievant sued owner and attempted to serve the summons and complaint on respondent.

Respondent refused to accept service and then informed owner about the suit. Respondent's allegiances were not with his client, grievant, but were clearly with his client, owner.

The case of In re State Grand Jury Investigation, 200 N.J. 481 (2009) explored the propriety of an employer paying for the representation of employees in connection with grand jury proceedings investigating the employer for alleged fraud. The Court remarked that an evaluation of actual or apparent conflict does not take place in a vacuum, but, rather, is highly fact specific. Id. at 491. Whether an attorney may be compensated for services by someone other than the client is governed by RPC 1.8(f), and, to a lesser extent, RPC 1.7(a) and RPC 5.4(c). Id. 485. The Court, thus, established six conditions that must be met for a lawyer to be permitted to accept payment for services from someone other than the client: (1) the informed consent of the client is secured; (2) the third-party payer is prohibited from, in any way, directing, regulating, or interfering with the lawyer's professional judgment in representing his client; (3) there cannot be any current attorney-client relationship between the lawyer and the third-party payer, regardless of whether the two representations are related; (4) the lawyer is prohibited from communicating with the third-party payer concerning the substance of the representation of his client (RPC 1.8(f)(3));

(5) the third-party payer must process and pay all such invoices within the course of its business, consistent with the manner, speed, and frequency it pays its own counsel; and (6) once a third-party payer commits to pay for the representation of another, the payer shall not be relieved of the obligation without leave of court. The fact that the lawyer and the client have elected to pursue a course of conduct deemed in the client's best interests, but disadvantageous to the third-party payer, shall not be sufficient reason to discontinue the third-party payer's payment obligation. Id. at 498-97.

Clearly, here, the majority of the Court's conditions were not met. Thus, respondent's receipt of a fee from owner to represent grievant was impermissible and, in our view, motivated by self-interest on respondent's part. His conduct in this regard violated RPC 1.7(a), RPC 1.8(b), RPC 1.8(f), and RPC 5.4(c). He is also guilty of violating RPC 1.4(c) and RPC 1.6(a). We dismiss the remaining charges (RPC 1.4(b), RPC 1.9, RPC 8.4(c) and RPC 8.4(d)). The only issue left for determination is the proper quantum of discipline.

Cases involving conflict of interest, absent egregious circumstances or serious economic injury to the clients, ordinarily result in a reprimand. In re Guidone, 139 N.J. 272, 277 (1994) and In re Berkowitz, 136 N.J. 134, 148 (1994). See,

e.g., In re Pellegrino, 209 N.J. 511 (2010) and In re Feldstein, 209 N.J. 512 (2010) (companion cases; the attorneys simultaneously represented a business that purchased tax-lien certificates from individuals and entities for whom the attorneys prosecuted tax-lien foreclosures; the attorneys violated RPC 1.7(a) and RPC 1.7(b); the attorneys also violated RPC 1.5(b) by failing to memorialize the basis or rate of the legal fee charged to the business); In re Ford, 200 N.J. 262 (2009) (attorney filed an answer to a civil complaint against him and his client and then tried to negotiate separate settlements of the claim against him, to the client's detriment; prior admonition and reprimand); and In re Mott, 186 N.J. 367 (2006) (attorney 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).

A reprimand may still result if, in addition to engaging in a conflict of interest, the attorney engages in other forms of non-serious unethical behavior. See, e.g., In re Soto, 200 N.J.

216 (2009) (attorney represented the driver and the passenger in a personal injury action arising out of an automobile accident; the attorney was also guilty of gross neglect, lack of diligence, failure to communicate with one of the clients, and failure to prepare a contingent fee agreement; no ethics history); In re Barone, 180 N.J. 518 (2004) (attorney engaged in conflicts of interest on two occasions by simultaneously representing driver and passenger in automobile matters; after filing the complaints, the attorney allowed them to be dismissed and took no further steps to have them reinstated; the attorney was guilty of gross neglect, lack of diligence, and failure to communicate with clients); In re Kraft, 167 N.J. 615 (2001) (attorney's unethical conduct encompassed four matters; in one matter, 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 another matter, the attorney failed 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 all four matters, the attorney exhibited lack of diligence and failed to communicate with clients; and, in one of the matters, the attorney failed to prepare a written fee

agreement); and In re Castiglia, 158 N.J. 145 (1999) (attorney engaged in a conflict of interest by simultaneously representing various parties with adverse interests, repeatedly failed to communicate to his clients, in writing, the basis or rate of his legal fee, and witnessed the signature on a deed and affidavit of title, even though the documents had been signed outside of his presence).

More serious conflicts have resulted in terms of suspension. See, e.g., In re Fitchett, 184 N.J. 289 (2005) (three-month suspension for attorney's multiple conflicts of interest that arose when he continued to represent a public entity in litigation with the defendant, after he had become employed by the defendant's law firm, and then filed a suit on behalf of the defendant against the public entity; the circumstances of his conflict of interest were found to be "egregious" and his misconduct was "blatant and gross"); and In re Kalman, 177 N.J. 608 (2003) (pro hac vice privileges suspended for one year for attorney who engaged in a conflict of interest and accepted compensation for representing a client from someone other than the client, the attorney engaged in litigation for a client in Pennsylvania while representing another client in related litigation in New Jersey; both states'

courts found that the attorney withheld documents from his adversary and failed to correct his client's false pleadings).

Respondent is also guilty of improperly divulging confidential information. Attorneys who were found guilty of divulging confidential information, or even threatening to do so, have received reprimands. See, e.g., In re Lord, 220 N.J. 339 (2015) (attorney forwarded to her adversary a copy of a letter to her clients that contained confidential attorney-client information, a violation of RPC 1.6(a); in addition, the attorney violated RPC 1.7(a)(2) when she sent to the clients a "pre-action letter," pursuant to R. 1:20A-6, which renders such a letter "a necessary prerequisite" to the filing of a lawsuit for unpaid fees, while she still represented them; finally, the attorney violated RPC 1.16(d) by summarily ending the representation of her clients, without notice, prior to her completion of legal work on their behalf; in mitigation, the attorney had no history of discipline in more than thirty years at the bar); In re Chatarpaul, 175 N.J. 102 (2003) (attorney threatened to divulge privileged information about the client to collect outstanding legal fees); and In re Hopkins, 170 N.J. 251 (2001) (attorney represented two divorcing couples in uncontested divorces; the attorney was aware that, when the divorces were finalized, two of the ex-spouses planned to marry

each other; while their matters were pending, the attorney discussed confidential financial information of the intended groom with the intended bride; the attorney was also guilty of a conflict of interest).

Because we have consolidated this matter with 16-220 for the purpose of imposing a single form of discipline, we will address our determination in that respect at the conclusion of our discussion of both matters.

DRB 16-220

Prior to the hearing in this matter, respondent filed a motion to dismiss the complaint on the grounds of judicial and quasi estoppel. Thereafter, he withdrew the motion.

This matter arose from respondent's continued practice of law after the effective date of his suspension. Specifically, respondent continued to represent his client, Hector Velez, Jr., in a lawsuit respondent had filed against Edwin Bermeo[10] on Velez' behalf to recoup moneys Velez had loaned to Bermeo.

In December 2015, the OAE and respondent entered into a stipulation of facts. The stipulation and testimony at the DEC hearing establish the following.

[10] The record also refers to Bermeo as "Borneo" and "Berneo."

The Court suspended respondent from the practice of law for three months, effective October 23, 2014. Respondent was aware of his suspension.

On October 24, 2014, pursuant to R. 1:20-20, respondent submitted his affidavit to the OAE, "[swearing] under oath" that he would not (1) practice law during his suspension; (2) provide legal services, give a legal opinion, suggest to the public an entitlement to practice law, or draw any legal instrument; or (3) use any stationery, sign, or advertisement suggesting that he, alone or with others, maintained a law office or was entitled to practice law.

On October 31, 2014, after the effective date of his suspension, respondent faxed to Vera Fedoroff, Esq., Bermeo's attorney, a stipulation of settlement, "a pleading," in the case of Velez v. Bermeo, which had been docketed in Superior Court, Monmouth County, Law Division. The stipulation of settlement identified the plaintiff's attorney as "Jeffrey R. Pocaro, Esq."

According to a December 2, 2014 grievance, filed by Fedoroff's law partner, Bunce Atkinson, Esq., the stipulation, dated October 17, 2014, was faxed to Fedoroff on October 31, 2014. The stipulation was drafted for Bermeo's signature, rather than his attorney's, and required Bermeo to make all checks payable to respondent and sent to respondent's law office.

Because respondent was not eligible to practice law at the time he faxed the stipulation, Federoff did not have her client execute the stipulation. Thereafter, on a date not specified, respondent telephoned Federoff to request that she have her client sign the stipulation and that she return it to him. However, Fedoroff refused to speak to respondent and, instead, asked her secretary to do so.

On November 18, 2014, respondent filed a notice of motion to be relieved as counsel in the Velez matter, returnable on December 5, 2014. However, respondent's attached certification in support of the motion also requested substantive relief seeking enforcement of the above settlement. Respondent confirmed that he had drafted the settlement agreement and a payment schedule on October 17, 2014, but the defendant neither signed nor returned the agreement and, therefore, he resubmitted it to Fedoroff, via fax, after the effective date of his suspension.

The certification respondent filed with the court stated "[t]he Court should enforce the settlement, reduce the settlement to a judgment so that the Plaintiff (pro se) or his new attorney (once a substitution of attorney is signed and filed) can work on collecting the judgment."

After respondent filed the motion to be relieved as counsel, the Velez case was transferred to Thomas M. Russo, Esq., and, following respondent's reinstatement, transferred back to respondent.

In respondent's written reply to Atkinson's December 22, 2014 grievance, and during an OAE demand interview, respondent admitted that he had engaged in the unauthorized practice of law by continuing to represent Velez after the effective date of his suspension.

Respondent stipulated to having violated RPC 5.5(a)(1) (unauthorized practice of law) for representing a client in a civil matter during his suspension and RPC 8.4(d), R. 1:20-16, and R. 1:20-20 (conduct prejudicial to the administration of justice) by failing to comply with the Court's Order of suspension.

Respondent maintained that the rules permitted him to file a motion with the court to be relieved as counsel. He claimed, however, that he inadvertently had failed to remove the designation "esquire" on the papers filed with the court. He conceded further that he made a mistake by asking the court to enforce the settlement and that, by seeking substantive relief on Velez' behalf, he engaged in the practice of law.

In his petition for reinstatement, in which he affirmed that he had not engaged in the practice of law, respondent failed to mention that he had filed a motion with a trial court, seeking substantive relief in Velez' litigation matter, and that he continued to communicate with counsel on Velez' behalf, after the effective date of the suspension order, by sending a fax to opposing counsel and telephoning her. Respondent attributed his misconduct to being ashamed of not completing the settlement before his suspension began; wanting Velez to succeed on his claim; and not wanting Velez to sue him because he did not carry malpractice insurance.

Respondent asserted that, when he faxed the letter to Fedoroff, he did not consider that he was violating the Court's Order as it had not occurred to him that he was "breaking the rules."

Respondent spoke for slightly under two hours in respect of mitigation, testifying, among other things, that, when he was in utero, his grandmother tried to force his mother to have an abortion; that he almost drowned during his first swimming lesson as a child; that he worked for his father after graduating from law school, but was not able to live up to his father's expectations; that he had a falling out with his two sisters; that he empathized with Velez because of their similar difficult relationships with

their fathers (Velez had borrowed money from his father to loan to Bermeo, but was unable to repay his father, which created a rift between them); and that he feared that he would contract Lou Gehrig's disease, as did his father. This latter factor was the only mitigating factor respondent raised in his prior disciplinary matters.

Respondent added that he has been twice divorced and has put four children through college. He related facts about one of his sons, who experienced hardship in his life and who later was arrested, convicted, and incarcerated. Respondent represented his son pro hac vice in that Ohio case and visits him every September.

Respondent also offered Exhibit R-1, a letter he drafted for Velez' signature, in which Velez stated that respondent put himself at risk to ensure that the settlement would be enforced. According to the letter, on December 13, 2013, respondent filed a complaint on Velez' behalf, just before the statute of limitations was to expire. Eventually, Bermeo agreed to a $25,000 settlement, which enabled Velez to repay his father and mend their relationship, for which Velez was grateful.

Respondent apologized to the Court, the OAE, the presenter, and the hearing panel. He suggested that the panel recommend a rule change on reinstatement applications –

> that attorneys who are applying to be reinstated include a copy of any motions that

> they filed . . . [to] help the Court, the Office of Attorney Ethics, the Disciplinary Review Board and future committees, because they'll have the entire package of what transpired after the suspension goes into effect and you have to file your motions because the clients have not obtained new counsel.
>
> [T62-3 to 62-24.][11]

Respondent added that, if the client did not retain a new lawyer, it was up to the suspended lawyer to file the motions. He pointed out that none of the ethics authorities would know, unless copies of the motions were included in the reinstatement filing, because R. 1:20-20 requires suspended attorneys to notify the Court of any motions that were filed, but does not require suspended attorneys to attach copies of those motions.

Respondent suggested that, but for this "gap" in the rule, he might not be before the DEC. He remarked that, had he been required to attach the motion he had filed, "it might have stopped me from putting in the request for relief, because the other motion that I filed to be relieved as counsel was just simply a motion to be relieved as counsel and no -- no other affirmative relief."

One of the panel members sought clarification of respondent's comments and inquired, "if I understand your

[11] T refers to the January 26, 2016 DEC hearing transcript.

testimony, if the rule was amended to require the motion to be attached, you may not have engaged in the unauthorized practice of law because you knew you would have gotten caught?" Respondent replied, "Correct." For further clarification, the panel member asked, "so if I understand your -- your suggestion for the rule change is because other than your duty of candor to the court, which requires you to not practice while suspended or to disclose that to the court, had you known you would have had to attach the motion you probably wouldn't have engaged in the unauthorized practice of law?" Respondent replied, "Correct."

Respondent maintained that his conduct did not cause any actual injury. He asked the DEC not to take pity on him but to be merciful in its decision. He had been forthright and cooperative by entering into a stipulation. Respondent believed that an admonition or reprimand would be sufficient discipline. A suspension would serve no purpose but "to ruin what's left of a sixty-five-year-old man's career."

Respondent's closing argument contrasted his conduct with that of the attorney in In re Marra, 183 N.J. 260 (2005), who received a three-year suspension for conduct respondent claimed was much more egregious than his own. Respondent maintained that Marra violated a myriad of rules, multiple times. He is the "gold standard of the bad boys that practice law while they were

suspended." Respondent argued that, in contrast, his conduct was de minimis.

Respondent stated, however, that if the same circumstances presented themselves a year from now, with the same parties, and the rule remained unchanged, he would repeat his misconduct. It had not occurred to him that practicing while suspended was wrong, because he was focused on fixing Velez' problem. Indeed, it was not until oral argument before us, after prodding, that respondent stated that he would not engage in similar conduct in the future.

In his closing argument to the hearing panel, respondent offered that, in addition to the imposition of either an admonition or a reprimand, he would be amenable to a proctor overseeing his practice and to taking more than the required continuing legal education credits.

The presenter argued that there was no connection between respondent's tragic life circumstances and the violations he committed. Rather, he maintained, respondent had presented those circumstances to plead for mercy from the panel. Pointing to the Pocaro decision in DRB 14-009, the presenter underscored our findings that respondent's propensity to violate the Rules of Professional Conduct was an aggravating factor warranting increased discipline.

The presenter maintained that respondent's claim, that he did not contemporaneously know that what he was doing was wrong, was simply incredible and that his letter to Velez, informing him of his suspension and urging him to seek new counsel, showed that to be the case.

The presenter highlighted the aggravating factors in this case: (1) this is respondent's fifth disciplinary matter, thus, "it doesn't seem to sink in"; (2) respondent admitted that, in a year's time, he would engage in the same conduct; (3) respondent lacked candor with disciplinary authorities (filing a petition for reinstatement stating that he had not practiced law); (4) respondent displays a propensity to violate the Rules of Professional Conduct; (5) respondent committed a fourth-degree crime under N.J.S.A. 2C:21-22 by engaging in the unauthorized practice of law; (6) respondent's admission that he would repeat the conduct demonstrates a lack of contrition or remorse; and (7) respondent viewed knowingly violating the Court's Order as de minimis conduct. The presenter, thus, argued that respondent should be suspended for either one year or two years.

Respondent disagreed with the presenter's characterization that he was not contrite or apologetic about what had transpired. He stated, "I'm shaken by what has gone on in this case."

* * *

The DEC found clear and convincing evidence that respondent practiced law while suspended, a violation of RPC 5.5(a)(1); that he was aware that he was practicing law while suspended; and that he intentionally omitted that fact from his application for reinstatement, thereby violating RPC 8.4(d).

The DEC was particularly concerned by respondent's testimony that, under the same circumstances, he would engage in the same conduct and that, had the Rule required him to attach any motions filed while he was suspended, he might not have practiced law during his suspension. In this respect, the DEC emphasized the fact that respondent's duty of candor to the Court when seeking reinstatement was not important enough to him to conform his conduct and that his failure to recognize the need to be forthright to the Court was troubling.

The DEC compared respondent's conduct to that of the attorney in In re Marra, supra, 183 N.J. 260, who received a three-year suspension for practicing law while suspended and filing a false affidavit with the Court stating that he had not practiced law during his suspension. Marra, too, had an extensive disciplinary history: private reprimand, reprimand, two three-month suspensions, six-month suspension, and one-year suspension.

Although respondent argued that he practiced law during his suspension to protect his client, the DEC noted respondent's concern that, if he did not follow through on the settlement, he could have been exposed to malpractice and an additional suspension for failing to properly represent his client. The DEC, thus, found that respondent allowed his personal interests to outweigh his duty to comply with the RPCs.

The DEC did not find a connection between respondent's personal travails and his ethics violations and, therefore, gave his mitigating circumstances little weight. In light of respondent's extensive ethics history, the DEC recommended a two-year suspension.

In an October 21, 2006 letter to us, respondent requested that we reduce the two-year suspension recommended by the DEC. In support of that request, respondent argued that the circumstances in his life influenced his conduct in this matter, presumably, driving him to put his client's interests ahead of his ethics obligations.

Respondent also asserted that his statement – that he would do the same thing over again – had been taken out of context. He maintained that he suggested a rule change in the application for reinstatement procedure to include any motions filed after a suspension goes into effect to give the disciplinary authorities

"the entire package of what transpired," presumably, where clients have not retained new counsel.

Respondent urged us to reduce the suspension to either a censure or a reprimand, or to time served (three months), when he originally violated the ethics rules. Respondent argued that a one- or two-year suspension is not warranted because there was no actual injury caused by his misconduct, and his client was very happy with his services; thus, the public confidence in the legal profession was not affected.

* * *

Following a de novo review of the record, we are satisfied that the conclusion of the DEC, that respondent was guilty of unethical conduct, is fully supported by clear and convincing evidence. Respondent admittedly practiced law while suspended and lied on his R. 1:20-20 affidavit that he had not done so.

The level of discipline for practicing law while suspended ranges from a lengthy suspension to disbarment, depending on the presence of other misconduct, the attorney's disciplinary history, and aggravating or mitigating factors. See, e.g., In re Brady, 220 N.J. 212 (2015) (one-year retroactive suspension imposed on attorney who, after a Superior Court judge had restrained him from practicing law, represented two clients in municipal court, and appeared in a municipal court on behalf of

a third client, after the Court had temporarily suspended him; the attorney also failed to file a R. 1:20-20 affidavit following the temporary suspension; significant mitigating factors, including the attorney's diagnosis with a catastrophic illness and other circumstances that led to the dissolution of his marriage, the loss of his business, and the ultimate collapse of his personal life, including becoming homeless, resulting in his desperate need to provide some financial support for himself; prior three-month suspension); In re Bowman, 187 N.J. 84 (2006) (one-year suspension for attorney who, during a period of suspension, maintained a law office where he met with clients, represented clients in court, and acted as Planning Board solicitor for two municipalities; prior three-month suspension; extremely compelling circumstances considered in mitigation); In re Marra, 170 N.J. 411 (2002) ("Marra I") (one-year suspension for practicing law in two cases while suspended and substantial recordkeeping violations, despite having previously been the subject of a random audit; on the same day that the attorney received the one-year suspension, he received a six-month suspension and a three-month suspension for separate violations, having previously received a private reprimand, a reprimand, and a three-month suspension); In re Wheeler, 140 N.J. 321 (1995) ("Wheeler I") (two-year suspension

imposed on attorney who practiced law while serving a temporary suspension for failure to refund a fee to a client; the attorney also made multiple misrepresentations to clients, displayed gross neglect and pattern of neglect, engaged in negligent misappropriation and in a conflict of interest, and failed to cooperate with disciplinary authorities);[12] In re Marra, supra, 183 N.J. 260 ("Marra II") (three-year suspension for attorney found guilty of practicing law in three matters while suspended; the attorney also filed a false affidavit with the Court stating that he had refrained from practicing law during a prior suspension; the attorney's history included a private reprimand, a reprimand, two three-month suspensions, a six-month suspension, and a one-year suspension – also for practicing law while suspended); In re Cubberley, 178 N.J. 101 (2003) (three-year suspension for attorney who solicited and continued to accept fees from a client after he had been suspended, misrepresented to the client that his disciplinary problems would be resolved within one month, failed to notify the client or the courts of his suspension, failed to file the affidavit of compliance required by Rule 1:20-20(a), and failed to reply to

[12] In that same Order, the Court imposed a retroactive one-year suspension on the attorney, on a motion for reciprocal discipline, for his retention of unearned retainers, lack of diligence, failure to communicate with clients, and misrepresentations.

the OAE's requests for information; the attorney had an egregious disciplinary history: an admonition, two reprimands, a three-month suspension, and two six-month suspensions); In re Wheeler, 163 N.J. 64 (2000) ("Wheeler II") (attorney received a three-year suspension for handling three matters without compensation, with the knowledge that he was suspended, holding himself out as an attorney, and failing to comply with Administrative Guideline No. 23 (now R. 1:20-20) relating to suspended attorneys; prior one-year suspension on a motion for reciprocal discipline and, on that same date, two-year consecutive suspension – also for practicing while suspended); In re Walsh, Jr., 202 N.J. 134 (2010) (attorney disbarred on a certified record for practicing law while suspended by attending a case conference and negotiating a consent order on behalf of five clients and making a court appearance on behalf of seven clients; the attorney also was guilty of gross neglect, lack of diligence, failure to communicate with a client, and failure to cooperate with disciplinary authorities during the investigation and processing of the grievance; the attorney failed to appear on an order to show cause before the Court; extensive disciplinary history, including a reprimand, a censure, and two suspensions); In re Olitsky, 174 N.J. 352 (2002) (disbarment for attorney who agreed to represent four clients in bankruptcy

cases after he was suspended, did not advise them that he was suspended from practice, charged clients for the prohibited representation, signed another attorney's name on the petitions, without that attorney's consent, and then filed the petitions with the bankruptcy court; in another matter, the attorney agreed to represent a client in a mortgage foreclosure after he was suspended, accepted a fee, and took no action on the client's behalf; in yet another matter, the attorney continued to represent a client in a criminal matter after the attorney's suspension; the attorney also made misrepresentations to a court and was convicted of stalking a woman with whom he had had a romantic relationship; prior private reprimand, admonition, two three-month suspensions, and two six-month suspensions); and In re Goldstein, 97 N.J. 545 (1984) (attorney disbarred for misconduct in eleven matters and for practicing law while temporarily suspended by the Court and in violation of an agreement with us that he limit his practice to criminal matters).

With the exception of Marra I, the attorneys who received one-year suspensions for practicing while suspended presented compelling mitigating circumstances. Respondent's mitigation centered on his failure to gain approval from his father and, therefore, empathizing with his client, as well as other

incidents in his life, none of which, in our view, excuse his misconduct. Thus, we start with a two-year suspension for respondent's practicing law while ineligible. There are numerous aggravating factors. Respondent misrepresented in his petition for reinstatement that he had not practiced law while suspended. Moreover, respondent has no appreciation for his ethics responsibilities, admitting that he would commit the same misconduct if presented with the same circumstances, changing that position only when prodded at argument before us. Finally, respondent has an egregious ethics history.

We must also factor in respondent's misconduct in DRB 16-205. Respondent engaged in a conflict of interest, which caused substantial financial injury to the grievant in that matter. The grievant lost his livelihood because of owner's conduct, yet recouped only $30,000. Respondent accepted a fee from owner rather than from his client and was, therefore, influenced by him. Respondent then divulged confidential information and failed to explain the matter to the extent reasonably necessary to permit the grievant to make informed decisions about the representation. Respondent also admitted that he failed to provide the grievant with a writing stating the basis or rate of his fee, maintaining that he did not think one was necessary

because the grievant was not the one paying him and adding that he did not provide written retainers in any equine matters.

In assessing the proper quantum of discipline to impose for the multitude of respondent's ethics infractions, we must consider respondent's egregious ethics history: a 1995 one-year suspension for criminal conduct and misrepresentation; a 2006 censure for gross neglect, lack of diligence, failure to expedite litigation, and failure to communicate with a client; a 2013 censure for conduct prejudicial to the administration of justice for asking an adversary to withdraw an ethics grievance in exchange for forbearing from instituting a lawsuit against the client; and a 2014 three-month suspension for failing to provide a client a writing setting forth the basis or rate of the fee, engaging in lack of diligence and failing to expedite litigation, making misrepresentations to a client, and making misrepresentations about a judge's comments about the case, conduct prejudicial to the administration of justice.

As we noted in our prior decision, respondent has a propensity to violate the Rules of Professional Conduct. We are astounded by his continued lack of regard for his ethics responsibilities. Respondent clearly believes that the Rules do not apply to him and, rather, does whatever it takes to satisfy the client paying his fees. He has not learned from his past

mistakes and our confidence in his ability and willingness to do so is waning. We, therefore, determine that, to protect the public, a three-year suspension is warranted.

Member Gallipoli considered respondent's woefully lax compliance with, and awareness of, the Rules of Professional Conduct, which caused him great concern that respondent will never conform his behavior to acceptable standards. He, therefore, found that respondent's character is unsalvageable, and voted to recommend respondent's disbarment.

Vice-Chair Baugh 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
Ellen A. Brodsky
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matters of Jeffrey R. Pocaro
Docket Nos. DRB 16-205 and DRB 16-220

Argued: November 17, 2016

Decided: March 1, 2017

Disposition: Three-year suspension

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

Ellen A. Brodsky
Chief Counsel