SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 16-253
District Docket No. XIV-2012-0344E

IN THE MATTER OF

MARY ROSE MOTT

AN ATTORNEY AT LAW

Decision

Argued: November 17, 2016

Decided: March 31, 2017

Isabel McGinty appeared on behalf of the Office of Attorney Ethics.

John McGill, III appeared on behalf of respondent.

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

This matter was before us on a disciplinary recommendation filed by Special Master Stephen M. Orlofsky for a two-year suspension and a permanent bar from respondent's serving as a municipal prosecutor in New Jersey. The three-count formal ethics complaint charged respondent with violating RPC 1.7(a)(1), RPC 1.7(a)(2), and RPC 1.8(k) (engaging in conflicts

of interest), RPC 1.16(a) (failing to decline or terminate representation, in violation of the Rules of Professional Conduct), RPC 1.16(d) (upon termination of the representation, failure to take steps reasonably practicable to protect a client's interest), RPC 3.1 (asserting an issue with no basis in law or fact), RPC 3.3(a)(1) (knowingly making a false statement of material fact or law to a tribunal), RPC 3.3(a)(4) and RPC 3.3(a)(5) (candor toward a tribunal), RPC 8.4(a) (knowingly violate or attempt to violate the Rules of Professional Conduct), RPC 8.4(c) (engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation), RPC 8.4(d) (conduct prejudicial to the administration of justice), and N.J.S.A 40A:9-22.5(a), (c), (d), (e), and (h) (non-compliance with provisions governing public officers) (count one); RPC 4.1(a) (in representing a client, a lawyer shall not knowingly make a false statement of material fact or law to a third person), RPC 8.1(a) (false statements to disciplinary authorities), and RPC 8.4(a), (c), and (d) (count two); RPC 3.4(b) (a lawyer shall not falsify evidence, counsel, or assist a witness to testify falsely), RPC 4.1(a), RPC 8.4(a), (c), and (d), N.J.S.A. 2C:28-2 (false swearing) and N.J.S.A. 2C:28-5 (witness tampering) (count three).

The Office of Attorney Ethics (OAE) recommends the imposition of, at a minimum, a two-year suspension and a permanent bar from respondent's serving as a municipal prosecutor. Respondent contends that a censure is the appropriate sanction. For the reasons set forth below, we determine that respondent be suspended for six months and permanently barred from serving as a municipal prosecutor in the State of New Jersey. Additionally, we recommend that the Court refer this matter to the Administrative Office of the Courts (AOC) for additional investigation into respondent's admitted history of preferential dispositions of municipal court cases.

Respondent was admitted to the New Jersey bar in 1989. She maintains an office for the practice of law in Baptistown, Hunterdon County. She has no disciplinary history in New Jersey.

We turn to the facts of this case. On January 20, 2012, Thomas Spork was stopped for speeding in Frenchtown, New Jersey, by then-Frenchtown Police Officer Harold Johnson. Spork was driving forty-five miles per hour in a posted twenty-five mile per hour zone. Officer Johnson issued Spork a ticket and summons to appear at the Joint Court of the Delaware Valley (Joint Court) in Frenchtown. On the ticket, Officer Johnson wrote "SPEEDING 30 - 25 MPH ZONE;" however, on another part of the ticket, Officer Johnson wrote the number "45" and circled it.

During the ethics hearing, Officer Johnson explained that the "45" notation reflected Spork's actual speed that prompted the traffic stop, and that he routinely used this type of hybrid annotation to give motorists roadside "breaks."

When Spork was cited for speeding, he was employed by Kocsis Farms, a Frenchtown business that respondent owns in partnership with her husband. Spork was driving a Kocsis Farms truck in the regular course of his employment. Spork knew respondent, knew that she was his employer, and saw her regularly in the course of his employment, as she signed his payroll checks on behalf of Kocsis Farms. Spork also lived as a tenant in a cottage on the Kocsis Farms property. Spork was aware that respondent was the municipal prosecutor for Frenchtown. During the traffic stop, the following verbal exchange occurred between Spork and Officer Johnson:

> **Johnson:** Come to court. Talk to the prosecutor, then you can work something out.
> **Spork:** Mary is the prosecutor.
> **Johnson:** What's that?
> **Spork:** Mary Mott, my boss, is the prosecutor.
> **Johnson:** Oh, you know her?
> **Spork:** Yeah.
> **Johnson:** She'll tell you what to do.

On February 8, 2012, approximately ten days after receiving the speeding ticket, Spork mentioned the ticket to respondent while picking up his paycheck at her home. He did not show the

ticket to respondent during this conversation, but asked respondent for advice about handling the matter. In reply, respondent told Spork that he could either pay the ticket or fight it, and gave him a pamphlet for a defensive driving course that could reduce the points he would receive in connection with the ticket. Respondent further explained that, if he came to court, she could "amend [the ticket] to a no point violation," but that it would make more financial sense for him to pay the ticket and take the class.

Subsequent to his conversation with respondent, Spork requested a hearing date with the Joint Court, which was ultimately scheduled for March 8, 2012. On that date, Respondent was working as the Frenchtown municipal prosecutor, and the Honorable Joseph S. Novak, J.M.C., presided over the Joint Court. When Spork arrived for court, respondent seemed surprised to see him. Appearing pro se, he spoke to respondent, who told him to take a seat and wait to be called by Judge Novak.

According to respondent, at some subsequent point, she was working on her scheduled cases in a small office adjacent to the courtroom. Respondent claimed that Officer Johnson and Frenchtown Police Chief Allan Kurylka were also present in that office. Spork's testimony corroborated respondent on this issue. At some point, Spork entered the small office, prompting

respondent to tell Officer Johnson, "I know this kid," to which Officer Johnson replied, "I know you know this kid."

Respondent asked Officer Johnson what he wanted to do about the ticket, and he replied, "I don't care, dismiss it." Chief Kurylka asked how respondent would dismiss the ticket. She replied that she would write "problem with discovery." According to respondent, although Chief Kurylka initially "grumbled" about her intent to dismiss Spork's ticket, neither Officer Johnson nor Chief Kurylka voiced any objection to her plan.

Chief Kurylka refuted respondent's version of events, however, testifying that he was not in the small office when respondent decided to dismiss the ticket, did not approve the dismissal of the ticket, and believed that the dismissal violated his written policy for the dismissal of motor vehicle violations, which he had previously provided to respondent. Chief Kurylka conceded, however, that his policy for the dismissal of motor vehicle violations included preferential dismissals for judges and for family members of police officers.

On a form entitled "REQUEST TO APPROVE PLEA AGREEMENT" for Spork's matter, respondent wrote "Please take as 1st Pro sey [sic]." She testified that she meant "pro se," and wrote it as a favor to get Spork out of court quickly. Additionally, before signing and dating the form, respondent wrote "N/G" on the form,

meaning "not guilty," and, under the heading for "Recommended Sentence/Comments," she wrote "Problem w/ Discovv [sic] Per officer." Respondent then gave the completed form to Spork and directed him to provide it to courtroom personnel. She admitted that she never disclosed to the police officers or Judge Novak that Spork was her employee at Kocsis Farms.

Based on respondent's written statements on Spork's plea form, Judge Novak found Spork not guilty of the speeding offense and dismissed his ticket. During the ethics hearing, Judge Novak testified that he made his findings based on the written representation made by respondent – who did not appear on the record for the dismissal - that "there was a discovery issue," and thus, the State could not prove its case against Spork.

As respondent repeatedly admitted during the ethics hearing, contrary to the representations she made on Spork's plea form, she had neither requested nor reviewed any discovery in respect of Spork's speeding ticket. She had not inquired about the status of the evidence in connection with the traffic stop, and, at the time she dismissed the citation, was unaware that the stop had even been video-recorded. Specifically, she admitted at the hearing that, at the time she annotated Spork's plea form, she had had "no discussion with anybody as to what the problem with the discovery was at the time we [dismissed

Spork's ticket]." Lieutenant Robert Winfield, who processed discovery for Frenchtown police matters, testified that no request for discovery had been made by respondent in the Spork matter and that, after investigation, he was aware of no problems with the discovery in the Spork matter.

At the hearing, respondent testified that she dismissed Spork's ticket because Officer Johnson told her to do so, and that "[i]f an officer said dismiss it, I did it. I had no other option." Officer Johnson, however, testified that neither he nor Chief Kurylka, who was also present in court that date, gave any indication to respondent that it was acceptable to dismiss Spork's ticket.

Displeased with the manner in which respondent dismissed Spork's ticket, Chief Kurylka initiated an internal investigation into the dismissal, which confirmed that there was no issue with discovery in the case. Kurylka informed Judge Novak of his findings, and reported the matter to the Hunterdon County Office of the Prosecutor. Ultimately, the Hunterdon County Prosecutor determined not to file criminal charges against respondent, but formally referred the matter to the OAE and provided its investigative file as evidence.

During the Hunterdon County Prosecutor's investigation, the OAE investigation, and the ethics hearing, respondent provided

multiple, inconsistent narratives explaining her conduct in dismissing Spork's ticket. In a March 30, 2012 e-mail to the Hunterdon County Prosecutor, respondent wrote that "Officer Johnson agreed to dismiss [Spork's] ticket." She claimed that the basis for Chief Kurylka's investigation into the Spork dismissal was an eroding relationship between the two, given decisions she had made, as municipal prosecutor, in other cases. She characterized the investigation as "harassment," and stated that "I know it is inappropriate to dismiss tickets . . . but all prosecutors do it when the officers ask." She also stated "yes, I knew [Spork], but then again, this is a small county and I know many of the defendants who appear in my court." Respondent made no mention that Spork was an employee of her and her husband; that he was driving a Kocsis Farms truck when Officer Johnson made the motor vehicle stop; that she had dismissed the ticket, citing "discovery problems," despite having never reviewed the discovery; or that respondent and Spork had discussed his speeding ticket, in her home, prior to the court date.

During an April 2, 2012 telephone call with the Hunterdon County Prosecutor, which was memorialized in a memorandum prepared by a detective, respondent admitted dismissing Spork's

ticket, but claimed "[i]t was the first time I ever did it and I will never do it again."

In her July 24, 2012 response to the ethics grievance, respondent wrote "I dismissed a speeding ticket with the approval of the Officer who wrote the ticket. I also happen to 'know' [Spork]." Further, respondent claimed that Officer Johnson's annotation circled on the ticket, which represented Spork's actual speed, "creates a problem with the summons in how it was written." In the same letter, respondent claimed that "I wish to note that while this matter had been specifically scheduled with the officer, Officer Johnson failed to bring his 'discovery' with him to court and was unprepared."

During her OAE interview, respondent asserted that, when Spork appeared in court, she asked Officer Johnson what he wanted to do about the ticket, to which he replied "I don't care, dismiss it." Chief Kurylka asked how respondent would dismiss the ticket, and she replied that she would write "problem with discovery. Do you have a problem with that?"

Respondent also claimed that there were issues with Spork's case because Officer Johnson had not brought discovery to court, and because the circled "45" on the ticket would have created credibility issues for the officer should Spork's matter be tried. Later in the same interview, however, respondent conceded

that she had not requested discovery from the police department for that court date, and that Officer Johnson could simply have gone to the adjacent police department and retrieved the case file. She added that she should have told the judge, in person, that the reason she was dismissing the ticket was that Officer Johnson had written two different speeds on it. She argued that "[t]he ticket needed to be dismissed. It had a problem on its face, I could not really prosecute this ticket."

During her testimony at the ethics hearing, respondent acknowledged that Chief Kurylka "grumbled" over her decision to dismiss Spork's ticket and asked her how she planned to accomplish the dismissal. Respondent testified that she told the Chief she would write "problem with discovery," but did not tell him or Officer Johnson what the purported problem with discovery was. She explained that "officers and particularly Officer Johnson . . . would come to court when a matter was scheduled and for some reason usually being a Defendant would show up with someone who had some sort of relationship to law enforcement" and that she would customarily dismiss the ticket. Respondent continued, "[b]ut, I will acknowledge that I had no discussion with anybody as to what the problem with discovery was at the time we did this. It was simply the officer telling me to dismiss the ticket and doing it." Moreover, respondent admitted

that she dismissed Spork's citation without ever having seen any discovery, including the actual ticket. Finally, respondent admitted that, in the past, when officers wanted to dismiss a ticket, she would routinely write "problem with discovery per the officer."

Providing further context to her willingness to dismiss Spork's ticket, respondent also testified that, while under investigation by the Hunterdon County Prosecutor's Office, she told a member of that office "come on . . . you know this kind of crap happens all the time," and that she has "always done it." Additionally, she testified before the special master that, after dismissing Spork's ticket, she "[n]ever thought about it again." Finally, respondent characterized the preferential dismissal of traffic tickets as "a practice that occurs . . . an officer comes in and says hey, can you get rid of this ticket, so and so's brother works for another [police] department somewhere. I've always done it, but I never felt comfortable with the practice . . . here I am getting caught for doing it."

During the ethics hearing, respondent acknowledged that she had spoken to Spork about the OAE's investigation into her conduct, both before and after disciplinary authorities interviewed him. During her conversations with Spork about the ethics investigation, however, respondent did not broach

substantive issues regarding either the ticket or Spork's anticipated testimony, except to ask him to confirm to the OAE that Chief Kurylka had been present when the dismissal of Spork's ticket was discussed, because the Chief's denial "bugged [respondent]." Respondent disclosed these conversations with Spork to the OAE during her initial interview at their offices. Spork did not recall speaking with respondent subsequent to the date the OAE interviewed him.

During her testimony at the hearing and in her summation brief, respondent admitted that her dismissal of Spork's ticket violated <u>RPC</u> 1.7(a)(2), <u>RPC</u> 1.16(a), and <u>RPC</u> 3.3(a)(5).

* * *

The special master issued two reports in this matter. The first report, dated May 6, 2016, addressed his findings of fact and conclusions of law. Upon the issuance of the first report, the OAE and respondent were afforded the opportunity to submit briefs to the special master on the appropriate quantum of discipline to be imposed on respondent. The second report, dated May 23, 2016, set forth the special master's disciplinary recommendation.

At the outset of his first report, the special master observed that:

> After the 2007 unearthing of irregularities in ticket dismissals in the Jersey City

Municipal Court, Chief Justice Stuart Rabner ordered a statewide review of the entire municipal court system to ensure that proper procedures for dismissing tickets were being followed. On July 31, 2008, the New Jersey Courts issued a *Report on the Review of Ticket Dismissal Procedures in the Municipal Court System* (the "Ticket Dismissal Report"), [citation omitted]. The Report explained:

> The results of the statewide review confirmed that the more than 2,500 municipal court judges and staff handle 6.5 million cases annually ....
>
> Justice can be served only when every municipal court case is decided without regard to personal advantage or extrajudicial considerations. The zero-tolerance policy for improprieties in adjudicating municipal court matters is essential to ensure both the public's confidence in our municipal courts and the protection of the reputation of our municipal court employees. [citation omitted].

Clearly, the courts have no tolerance for prosecutorial abuse of municipal court proceedings, such as fixing tickets.

As to count one of the complaint, the special master determined that respondent's conduct violated <u>RPC</u> 1.7(a)(2) and <u>RPC</u> 1.16(a). In respondent's answer to the complaint, during her testimony, and in her summation brief to the special master, she conceded violating these <u>RPC</u>s, stating that she had "dismissed a speeding ticket of her farm's employee . . . without disclosing to the court her relationship to the defendant and recusing

herself from that matter." The special master explained that, as Spork's employer, respondent should have recused herself, in light of the significant risk that her representation of the State would be materially limited, and should have notified the appropriate authorities to appoint an alternate municipal prosecutor to Spork's matter.

In respect of the allegations that respondent violated RPC 1.7(a)(1) and RPC 1.8(k), the special master found no clear and convincing evidence that an attorney-client relationship existed between Spork and respondent. The special master reasoned that, although Spork may have sought basic legal advice from respondent while he was picking up his paycheck, he "never manifested an intent that [r]espondent provide legal services to him or represent him;" and, "[r]espondent never manifested her consent to provide legal services to Spork." Accordingly, since there was no attorney-client relationship between respondent and Spork, the special master determined that there could be no violation of RPC 1.7(a)(1) or RPC 1.8(k).

The special master determined that respondent violated RPC 3.3(a)(5). Again, in her answer to the complaint, during her testimony, and in her summation brief to the special master, respondent conceded violating this RPC, admitting that she had "dismissed a speeding ticket of her farm's employee . . .

without disclosing to the court her relationship to the defendant and recusing herself from that matter." The special master additionally cited respondent's lack of candor in respect of her failure to disclose to the police or Judge Novak that Spork was an employee of Kocsis Farms, and her affirmative representation to the court that there was an issue with the discovery in Spork's matter, despite the fact that she had neither requested nor reviewed the discovery in the case.

Relying largely on the same analysis, the special master determined that respondent violated RPC 3.1 and RPC 3.3(a)(1) and (4). He stressed the fact that respondent's false statements to Judge Novak, which were knowing and intentional, had resulted in a favorable disposition for Spork not available to the public at large, and that respondent knew, given her twenty years of experience as a municipal prosecutor, that her false written statements on Spork's plea form would lead to the dismissal of the traffic ticket.

Based on his determination that respondent violated multiple RPCs, the special master concluded that she additionally violated RPC 8.4(a). Specifically, the special master concluded that respondent's violation of RPCs 1.7(a)(2), 1.16(a), 3.1, and 3.3(a)(1), (4), and (5), as detailed above, "necessarily violated RPC 8.4(a)" which states that "[i]t is

professional misconduct for a lawyer to . . . violate or attempt to violate the Rules of Professional Conduct." Next, the special master determined that respondent's misconduct toward the municipal court constituted "conduct involving dishonesty, fraud, deceit or misrepresentation," in violation of RPC 8.4(c), and "undermined the judicial process and prejudiced the administration of justice," in violation of RPC 8.4(d).

In respect of the alleged violations of ethics law applicable to municipal prosecutors, the special master determined that respondent violated N.J.S.A 40A:9-22.5(a), (c), (d), and (e), but not (h). Citing applicable precedent, the special master emphasized that, under this pillar of ethics law, "it is the potential for conflict, rather than proof of an actual conflict or of actual dishonesty, that commands a public official to disqualify [herself] from acting on a matter of public interest." Applying the lower standard governing the ethics statute, the special master determined that respondent's status as Spork's employer created a conflict and, thus, respondent's failure to recuse herself violated N.J.S.A. §40A:9-22.5(a). Under the same analysis, the special master determined that respondent also violated subsections (d) and (e) of that statute, specifically, by ignoring her "personal involvement" in Spork's matter that might impair her objectivity and by

providing basic legal advice to Spork. Finally, the special master determined that respondent violated subsection (c) of the statute by using her position in public office to secure an "unwarranted privilege or advantage" for Spork.

The special master failed to address the RPC 1.16(d) charge cited in count one of the complaint.

The special master dismissed count two in its entirety, finding that the OAE had not met its burden to prove any of the allegations. Specifically, as to the alleged violation of RPC 4.1(a), the special master determined that, because the OAE alleged that respondent's false statements of material fact were made in connection with the OAE's investigation, and were not made in connection with the representation of a client, this RPC was inapplicable.

Next, the special master determined that, due to the conflicting testimony of Officer Johnson and Chief Kurylka during the ethics hearing, the OAE could not satisfy its burden of proof that respondent had made false statements of material fact to the OAE or to the Hunterdon County Prosecutor's Officer during their respective investigations, in violation of RPC 8.1(a). In making this determination, the special master did not address respondent's statements made to the OAE and the

prosecutor's office, or her statements made during the ethics hearing.

Finally, the special master concluded that, because the OAE had been unable to prove the foregoing count two charges, especially in respect of the allegation that respondent acted with deception during the OAE investigation, the charges that she violated RPCs 8.4(a), (c), and (d) must be dismissed.

The special master sharply criticized count three of the complaint, finding that "many of the OAE's allegations in Count III of the complaint merely rehash the allegations in Counts I and II. . . . Apparently, the only new issue before me in Count III is whether Respondent counseled Spork to falsify his testimony to the OAE, in violation of RPC 3.4(b) and N.J.S.A. § 2C:28-5." Although the special master found, as fact, that respondent had spoken to Spork both before and after the OAE interviewed him, he found no evidence that respondent attempted to influence or tamper with Spork in connection with the ethics investigation. Accordingly, the special master dismissed count three in its entirety.

Based on his findings of fact and conclusions of law, and considering the respondent's previously unblemished disciplinary

record,[1] the special master recommended that a two-year suspension be imposed, and that respondent be permanently barred from serving as a municipal prosecutor in the State of New Jersey. In crafting his disciplinary recommendation, the special master surveyed applicable New Jersey disciplinary precedent, including In re Spitalnick, 63 N.J. 429 (1973) (two-year suspension imposed on a municipal court judge who fixed a traffic summons for a client in another municipal court; the judge marked his client's ticket "not guilty" and "under medical treatment," and then convinced the presiding municipal court judge to sanction the improper dismissal; the Court considered disbarment as a possible sanction but weighed, in mitigation, the judge's age, unblemished record, voluntary admission of guilt, and cooperation with law enforcement); In re Weishoff, 75 N.J. 326 (1978) (one-year suspension imposed on a municipal prosecutor who was a "knowing party" to the improper dismissal of a speeding ticket in municipal court; the attorney knew that neither the defendant nor the police officer would be present on the court date, asked a member of the court staff to impersonate the defendant to perfect the sham, and ultimately convinced the municipal court judge to dismiss the matter; in imposing only a suspension, the Court acknowledged that

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[1] The special master agreed with both respondent and the OAE that respondent's lack of prior discipline was a mitigating factor. The special master rejected the parties' additional arguments regarding aggravating and mitigating factors.

the attorney had resigned as prosecutor); <u>In re Hardt</u>, 72 <u>N.J.</u> 160 (1977) (companion case to <u>Weishoff</u>, reprimand imposed on municipal court judge; although the Court acknowledged that Judge Hardt "was unaware in advance of any plot and considered the entire incident a joke," the Court found that he "permitted himself to be utilized and become part of the ticket fixing attempt;" unblemished disciplinary record and reputation for integrity and high character considered in mitigation); <u>In re Norton</u>, 128 <u>N.J.</u> 520 (1992) (three-month suspension imposed on attorney who arranged for a client's DWI case to be transferred to a municipality where attorney's former law partner, Kress, acted as municipal prosecutor; Kress then manipulated the judge to dismiss the case by withholding a material fact as to why officers did not want the defendant prosecuted – defendant was a police booster; in mitigation, attorney had unblemished disciplinary record); and <u>In re Whitmore</u>, 117 <u>N.J.</u> 472 (1990) (reprimand imposed on a municipal prosecutor who failed to disclose to the court that a police officer whose testimony was critical to the prosecution of a driving while intoxicated charge had intentionally left the courtroom before the case was called, resulting in the dismissal of the charge).

The special master determined that respondent's misconduct was most analogous to that of the attorney in <u>Spitalnick</u>, who

abused his position as a public officer for the benefit of his private client. The special master opined that here, respondent purposely abused her position by submitting false information to Judge Novak, knowing that it would result in the dismissal of the traffic summons issued to Spork, who was employed on her farm. Unlike the attorneys in Whitmore and Norton, who received a reprimand and three-month suspension, respectively, respondent affirmatively lied to a municipal court judge.

The special master observed that, like the attorney in Spitalnick, who was suspended for two years, respondent had no disciplinary history and did not act for personal gain. Yet, he emphasized that her conduct was very troubling, because she appeared neither truly contrite nor to appreciate the gravity of her misconduct as a public officer, having testified that "this kind of crap happens all the time," that she has "always done it," and that, after dismissing Spork's ticket, she "[n]ever thought about it again."

In addition to the two-year suspension, the special master recommended that respondent be barred from serving as a municipal prosecutor in New Jersey. He concluded:

> To [respondent], this was a minor incident. Respondent's nonchalance indicates that she does not understand the importance of her position as a municipal prosecutor. Our municipal prosecutors must take their jobs seriously, and I have serious doubts as to

> whether Respondent is up to the task . . . As the Supreme Court [has] made clear, the people of this State "cannot and will not tolerate members of the profession subverting judicial integrity at any level for the damage is irreparable." Spitalnick, 63 N.J. at 431-32.

* * *

On November 18, 2016, the OAE filed a motion to supplement the record, asserting that, contrary to respondent's counsel's representations made to us during oral argument, respondent did not "relinquish" her municipal court appointments but, rather, was removed pursuant to the statutory authority of the Hunterdon and Warren County Prosecutor's Offices.

On November 22, 2016, respondent submitted a letter brief offering no objection to the OAE's motion to supplement the record. Respondent argued, however, that the additional evidence actually serves as mitigation in this matter, as it establishes that respondent voluntarily ceased serving as a municipal prosecutor and forfeited her right to collect any salary, despite the respective municipalities' contractual obligation to pay her through the end of 2016. Respondent asserts that the OAE's attempt to use the additional evidence in aggravation in this case is improper, as she has the right to make a good faith defense in this case, including regarding her right to continue serving her municipal appointments.

The documents that the OAE seeks to submit consist of the written record documenting how respondent was superseded in her role as municipal prosecutor by the respective County Prosecutor's Offices. As noted, respondent offered no objection to the supplementation of the factual record. We, therefore, determined to grant the OAE's motion, but find that the net effect of the documents is negligible in our determination in this matter.

The OAE contends that, despite the special master's determination that respondent had committed misconduct, she continued to fight for her right to serve as municipal prosecutor in her appointed courts. Accordingly, the OAE implies that this conduct should be considered in aggravation. Respondent contends that, as a matter of law, the municipalities had the authority to decide to keep her in her appointed position as municipal prosecutor while her ethics case was reviewed by us and, ultimately, by the Court, and that she eventually voluntarily relinquished her positions and forfeited her salaries, to which she was entitled. Respondent urges us to consider her behavior in mitigation.

We are not moved by the arguments of either party over this collateral issue. Simply put, the OAE's and respondent's respective positions on whether or not she was allowed to

continue to serve as a municipal prosecutor pending the Court's ultimate decision in this matter is of little relevance to our review of respondent's charged conduct and the assessment of discipline in this matter.

* * *

Following a de novo review of the record, we determine that the charges of unethical conduct found by the special master are supported by clear and convincing evidence. Additionally, we determine that, as to count two of the formal ethics complaint, respondent violated RPC 8.1(a), RPC 8.4(c), and RPC 8.4(d) by making false statements to both the Hunterdon County Prosecutor's Office and the OAE during their respective investigations of her conduct. We determine to dismiss the remaining charges.

The crux of respondent's misconduct in this case is straightforward – she improperly dismissed Spork's ticket, and did so using calculated misrepresentations to Judge Novak, without the blessing of the Frenchtown Police Department (which permission would still beg impropriety), all while occupying a public position from which she should have recused herself, given her employer-employee relationship with Spork. She committed this misconduct without hesitation or afterthought,

since, for her, the practice of the preferential dismissal of citations was routine.

As the New Jersey Supreme Court has announced:

> Nowhere can the community be more sensitive to the regularities – or the irregularities – of judicial administration than at the local level. While on the grand scale of events a traffic violation may be of small significance, the corruption of judicial administration of a Municipal Court is of paramount importance. Such conduct, visible and apparent to the community, destroys the trust and confidence in our institutions upon which our entire governmental structure is predicated. We cannot and will not tolerate members of the profession subverting judicial integrity at any level, for the damage is irreparable.
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> [Spitalnick, supra, 63 N.J. at 432].

As to count one, respondent's conduct in securing the dismissal of Spork's speeding ticket clearly violated RPC 1.7(a)(2) and RPC 1.16(a).[2] In her answer to the complaint, during her testimony, and in her summation brief to the special master, respondent conceded violating these RPCs, stating that she had "dismissed a speeding ticket of her farm's employee . . . without disclosing to the court her relationship to the defendant and recusing herself from that matter." Whether

[2] Although the special master properly determined that respondent's misconduct also violated N.J.S.A 40A:9-22.5(a), (c), (d), (e), those transgressions do not affect the appropriate quantum of discipline to be imposed in this matter, and are subsumed in the applicable RPC violations.

respondent had a vested personal or pecuniary interest in seeing Spork's ticket dismissed is immaterial, as she was acting as a municipal prosecutor for the State of New Jersey and was also Spork's employer. Respondent should have recused herself, given the significant risk of a concurrent conflict of interest in the matter. Respondent knew, based on her lengthy experience as a municipal prosecutor, that the proper action would have been to alert Judge Novak and the Frenchtown authorities of the conflict, postpone the matter, and seek the appointment of an alternate municipal prosecutor to handle Spork's matter.

As to the charged RPC 1.7(a)(1) and RPC 1.8(k) violations, the special master properly determined that there was no clear and convincing evidence that an attorney-client relationship existed between Spork and respondent and, thus, the predicate element for violating these RPCs was absent. "At its most basic, [the attorney-client relationship] begins with the reliance by a nonlawyer on the professional skills of a lawyer who is conscious of that reliance and, in some fashion, manifests an acceptance of responsibility for it." Kevin H. Michels, New Jersey Attorney Ethics: The Law of New Jersey Lawyering, 247 (2014), citing In re Palmieri, 76 N.J. 51, 58, 60 (1978). The relationship can begin absent an express agreement, a bill for services rendered, and the actual provision of legal services.

Ibid. The relationship may be inferred from the conduct of the attorney and "client," or by surrounding circumstances. Id. at 58-59.

Stated differently, when "the prospective client requests the lawyer to undertake the representation, the lawyer agrees to do so and preliminary conversations are held between the attorney and client regarding the case, then an attorney-client relationship is created." Herbert v. Haytaian, 292 N.J. Super. 426, 436 (App. Div. 1996). It must, nonetheless, be "an aware, consensual relationship." Palmieri, supra, 76 N.J. at 58. On the attorney's side, there must be a sign that the attorney is "affirmatively accepting a professional responsibility." Id. at 58, 60. See also Procanik By Procanik v. Cillo, 226 N.J. Super. 132, 146 (App. Div. 1988), certif. den. 113 N.J. 357 (1988) (a lawyer "must affirmatively accept a professional undertaking before the attorney-client relationship can attach.")

Here, although Spork sought basic legal advice from respondent while picking up his paycheck, he did not request that she undertake his representation, and she manifested no intent to do so. To the contrary, the facts support a conclusion that Spork was asking respondent, as a municipal prosecutor, for input on how he should handle the matter pro se. There was no aware, consensual relationship between Spork and respondent.

Because no attorney-client relationship was formed, the special master properly concluded that there can be no violation of RPC 1.7(a)(1) or RPC 1.8(k).

In securing the dismissal of Spork's ticket, respondent also breached RPC 3.3(a)(5). Again, respondent conceded violating this RPC, stating that she had "dismissed a speeding ticket of her farm's employee . . . without disclosing to the court her relationship to the defendant and recusing herself from that matter." Her conduct, however, was worse than she conceded. By annotating "N/G," and "Problem w/ Discovv [sic] Per officer" on Spork's ticket, in her role as the Frenchtown municipal prosecutor, respondent made an affirmative misrepresentation to Judge Novak, despite the fact that she had neither requested nor reviewed the discovery in the case. At the time she made these representations, she had not even seen Spork's ticket. Not only was respondent's failure to disclose this material fact reasonably certain to mislead the tribunal, but also respondent's specific intent was to mislead Judge Novak such that he would dismiss Spork's speeding ticket. She achieved her goal, to Spork's benefit.

For the same reasons set forth above, respondent's conduct in dismissing Spork's ticket also violated RPC 3.1 and RPC 3.3(a)(1) and (4). Respondent's representations to Judge Novak –

that there was a problem with discovery and, thus, that the case against Spork could not be proven - were knowingly and intentionally made, despite the lack of any basis in fact or law. Respondent knew that her false material written statements on Spork's plea form would secure her desired outcome - the dismissal of the ticket by Judge Novak. According to her own testimony, she had perfected this practice and routinely used the same notation to dismiss other tickets.

By her violations of RPCs 1.7(a)(2), 1.16(a), 3.1, and 3.3(a)(1), (4), and (5), as detailed above, respondent also violated RPC 8.4(a), which states that "[i]t is professional misconduct for a lawyer to . . . violate or attempt to violate the Rules of Professional Conduct." Respondent's affirmative misrepresentations to the municipal court also clearly constituted "conduct involving dishonesty, fraud, deceit or misrepresentation," in violation of RPC 8.4(c). Respondent's misconduct as the Frenchtown municipal prosecutor – specifically her material misrepresentations to Judge Novak – also "undermined the judicial process and prejudiced the administration of justice," in violation of RPC 8.4(d).

Finally, as to count one, because there is no evidence in the record to support the RPC 1.16(d) charge, we determine to dismiss it.

In respect of count two, the OAE alleged that respondent violated RPC 4.1(a) by making false statements of material fact to the OAE in connection with its investigation. That Rule, however, requires that the false statements be made in connection with the representation of a client. Here, respondent did not make these statements in connection with the representation of a client, but, rather, in her personal capacity, as an attorney answering alleged ethics violations. For this reason, this charge cannot be sustained.

In contrast, however, based on respondent's own statements to the Hunterdon County Prosecutor's Office and to the OAE during their respective investigations, as compared to her sworn testimony at the ethics hearing, we determine that the OAE has established that respondent made false statements of material fact during the criminal and ethics investigations into her conduct, in violation of RPC 8.1(a), RPC 8.4(c), and RPC 8.4(d).

Respondent's explanation of her dismissal of Spork's ticket has been inconsistent and evolving, depending on the identity of her audience and the stage of the relevant proceeding against her. In her March 30, 2012 e-mail, sent directly to the Hunterdon County Prosecutor, respondent claimed that "Officer Johnson agreed to dismiss [Spork's] ticket." She alleged that Chief Kurylka's investigation into the Spork dismissal was due

to bad blood between the two, rather than her misconduct. She characterized the investigation as "harassment," and stated that "I know it is inappropriate to dismiss tickets . . . but all prosecutors do it when the officers ask." She also admitted to the Hunterdon County Prosecutor that "yes, I knew [Spork], but then again, this is a small county and I know many of the defendants who appear in my court." Notably, respondent made no mention of the fact that Spork was her employee, that he was driving a Kocsis Farms truck while stopped, that she had misrepresented to Judge Novak that there were "discovery problems," or that respondent and Spork had previously spoken, in her home, about his speeding ticket.

Moreover, respondent testified that, while under investigation by the Hunterdon County Prosecutor's Office, she told a member of that office "come on . . . you know this kind of crap happens all the time," and that she has "always done it." Additionally, she testified before the special master that, after dismissing Spork's ticket, she "[n]ever thought about it again." However, during an April 2, 2012 telephone call with the Hunterdon County Prosecutor, which was memorialized in a memorandum prepared by a detective, respondent admitted dismissing Spork's ticket, but claimed "[i]t was the first time I ever did it and I will never do it again."

In her July 24, 2012 written response to the ethics complaint, respondent claimed "I dismissed a speeding ticket with the approval of the Officer who wrote the ticket. I also happen to 'know' [Spork]." Adding to her prior rationale, respondent claimed that Officer Johnson's "45" annotation on the ticket, which represented Spork's actual speed, "creates a problem with the summons in how it was written." Respondent failed to mention, however, that at the time she dismissed Spork's case, she had not actually seen his citation. In the same letter, respondent claimed that "I wish to note that while this matter had been specifically scheduled with the officer, Officer Johnson failed to bring his 'discovery' with him to court and was unprepared." Again, respondent failed to mention that she had not, as the municipal prosecutor, requested discovery, or that Officer Johnson easily could have retrieved the police file from the adjacent police department in order to try the case.

During her OAE interview, respondent provided additional details in an attempt to mitigate her behavior, stating that Spork came to court and entered the office where she was working and that she told Officer Johnson, "I know this kid," to which Officer Johnson replied, "I know you know this kid." Respondent asserted that she asked Officer Johnson what he wanted to do

about the ticket, to which he replied "I don't care, dismiss it." She admitted that Chief Kurylka inquired how respondent would dismiss the ticket, to which she replied that she would write "problem with discovery. Do you have a problem with that?" Again, respondent claimed that there were genuine issues with Spork's case because Officer Johnson had not brought discovery to court, and that the circled "45" on the ticket would have created evidentiary issues at trial. Later in the same interview, however, respondent conceded that she had not requested discovery from the police department, and agreed that Officer Johnson simply could have gone to the adjacent police department and retrieved the case file for trial. Further, respondent admitted that, to pursue a dismissal on the basis of evidentiary issues, she should have told the judge that the reason she was dismissing the ticket was the two speeds written on the front.

Undeterred, however, respondent stated "[t]he ticket needed to be dismissed. It had a problem on its face, I could not really prosecute this ticket." Again, however, respondent had not even seen the ticket at the time she dismissed it, so her explanation does not negate, but only attempts to rationalize, after the fact, the misconduct she committed. Moreover, respondent's excuse that the ticket was fatally defective, from

an evidentiary standpoint, fundamentally ignores her role as municipal prosecutor – to address such an evidentiary issue at trial by eliciting testimony from Officer Johnson regarding what the circled "45" on the ticket actually meant. Her claim that such a "defect" is insurmountable simply does not pass muster.

We conclude that respondent was most truthful regarding the dismissal of Spork's ticket during her testimony at the ethics hearing. There, while under oath, respondent admitted that Spork's ticket was dismissed simply because she could dismiss it for him, and that she routinely engaged in the preferential dismissal of cases. Both Officer Johnson and Chief Kurylka corroborated this aspect of her testimony. Respondent acknowledged that Chief Kurylka "grumbled" over her decision to dismiss Spork's ticket and asked her "how are you going to do that?" Respondent testified that she told the Chief she would write "problem with discovery," despite there being no legitimate problem with the discovery in the case. Respondent rationalized that "officers . . . would come to court when a matter was scheduled and for some reason usually being a Defendant would show up with someone who had some sort of relationship to law enforcement" and she would dismiss the ticket. Respondent continued, "[b]ut, I will acknowledge that I had no discussion with anybody as to what the problem with

discovery was at the time we did this. It was simply the officer telling me to dismiss the ticket and doing it."

Moreover, while under oath, respondent admitted that she dismissed Spork's citation without ever having seen any discovery, including the actual ticket. Finally, respondent admitted that, in the past, when officers wanted to dismiss tickets, she would routinely write "problem with discovery per the officer" – the same notation made on Spork's ticket - to secure that outcome.

During the ethics hearing, respondent characterized the practice of the preferential dismissal of traffic tickets as "a practice that occurs . . . an officer comes in and says hey, can you get rid of this ticket, so and so's brother works for another [police] department somewhere. I've always done it, but I never felt comfortable with the practice . . . here I am getting caught for doing it."

Finally, we dismiss count three of the complaint in its entirety, essentially for the same reasons set forth by the special master. We agree that count three reiterated the allegations of the prior counts and then added an allegation that respondent counseled Spork to falsify his testimony to the OAE, in violation of <u>RPC</u> 3.4(b) and <u>N.J.S.A.</u> § 2C:28-5. Although respondent admitted speaking to Spork, both before and after the

OAE interviewed him, the record is bereft of any evidence that respondent attempted to tamper with or influence Spork in connection with the ethics investigation.

In sum, respondent was guilty of violations of RPC 1.7(a)(2); RPC 1.16(a); RPC 3.1, RPC 3.3(a)(1),(4), and (5); RPC 8.1(a); and RPC 8.4(a), (c), and (d). The only issue left for determination is the proper discipline for respondent's misconduct.

The discipline imposed in cases involving similar misconduct in connection with municipal court proceedings has ranged from a reprimand to disbarment, depending on the facts of the offense, the presence of other unethical conduct, and the analysis of aggravating and mitigating factors.

In In re DeLucia and In re Terkowitz, 76 N.J. 329 (1978), each attorney received a one-year suspension. At the time of their misconduct, they were both municipal court judges in Rutherford, New Jersey. Id. at 330. Barbara Spencer, Terkowitz's secretary, received a ticket for improperly passing a school bus on her way to work. Id. at 331. Later that day, she informed Terkowitz that she had not seen the school bus because of other traffic. Id. at 331-32. Terkowitz telephoned DeLucia and explained that Spencer had been experiencing physical problems due to her pregnancy, that her view had been obstructed and,

therefore, she had not seen the school bus before passing it. Id. at 332. DeLucia then contacted the ticketing officer, explained the circumstances, and asked whether he would object if they "took care of it." Ibid. The officer responded that he did not care. Ibid.

While in chambers, without anyone appearing before him, DeLucia "personally noted a not guilty plea on the court copy of [Spencer's] summons and entered a judgment of not guilty." Ibid. In the portion of the summons for the witness' testimony, in the absence of a court hearing or any testimony, DeLucia wrote "testimony that . . . defendant states view was obstructed by trees . . . ." Ibid. Spencer's acquittal was based solely on the information that DeLucia had received from Terkowitz. Ibid.

When the prosecutor's office investigated the Spencer summons, DeLucia arranged for Spencer to prepare an affidavit reciting what had occurred, and to back-date it to the date of the summons, which was also the date that she had conveyed the information to Terkowitz. Id. at 332-33. DeLucia testified before the Advisory Committee on Judicial Conduct that, as to Spencer's affidavit, he had known that he was "arranging for the filing of a false document." Id. at 335.

The Court noted that it had previously denounced ticket-fixing, "with its ramifications of false records, false reports,

favoritism, violation of court rules, and cover-up, all of which exist in this case. . . . Such conduct compromises the integrity of the judicial process and violates the fundamental principles of impartial justice." Id. at 336.

Although DeLucia resigned his position as municipal court judge, suffered great mental anguish, and did not personally profit from the misconduct, the Court imposed a one-year suspension, stating:

> A judge who does "favors" with his office is morally an embezzler. He is also a fool, for a judge who plays a "good" fellow for even a few must inevitably be strained with the reputation of a man who can be reached. [citations omitted.]
>
> [Ibid.]

As to Terkowitz, the Court found that he knowingly participated in the improper dismissal of the traffic summons and attempted to conceal the wrongdoing by permitting the preparation of an affidavit with a back-dated acknowledgement and by executing a false jurat. Id. at 338.

In In re Hardt, supra, 72 N.J. 160 (municipal court judge) and In re Weishoff, supra, 75 N.J. 326 (municipal prosecutor), the municipal court judge was removed from his position and reprimanded, while the prosecutor was suspended for one year for participating in fixing a speeding ticket.

In Hardt, after Muriel Mansmann received a speeding ticket, the return date of the summons was adjourned at the request of her attorney and re-calendared. Id. at 162. When the officer who issued the ticket discovered that his and Mansmann's names had been crossed off the calendar, he assumed that the case had been postponed or that Mansmann had entered a guilty plea, so he left court. Id. at 163.

Later that day, when only Hardt, the court clerk, the deputy clerk and Municipal Prosecutor Weishoff were still in the courtroom, Weishoff called Mansmann's name and simultaneously beckoned the deputy clerk to come forward, as if she were Mansmann. Id. at 163-64. When Hardt asked the deputy clerk how she pleaded, Weishoff whispered to her to respond "not guilty," which she did. Ibid. Hardt then announced that he would deny a continuance and direct a verdict of not guilty. He completed the back of the summons "by writing in under finding 'N.G.'" Id. at 164.

The Court found that Hardt had not known in advance that any fraud or ticket-fixing was about to occur. Ibid. Although, at the hearing before the Court, Hardt had insisted that the entire "affair was a 'farce'" and that they were "simply clowning around," the Court found that Hardt permitted himself to be used and to become a part of a ticket-fixing attempt. Id.

at 164-65. The Court was not swayed by Hardt's efforts to minimize the seriousness of his misconduct based on his lack of advance knowledge of the plot, because of "his incorrect completion of the summons, his signature and stamp of approval thereon, his failure thereafter to do anything to correct or rectify it, his knowledge that [the deputy clerk] stood before him --- not Muriel Mansmann, and his awareness that the Prosecutor's statements were inaccurate." Id. at 165. In addition, the Court considered that Hardt knew that the defendant's failure to appear did not justify a finding of not guilty. Ibid.

In imposing only a reprimand, the Court considered that the transgression had constituted a single aberrational act and was not part of a course of conduct, Hardt had an otherwise unblemished record, and, as a member of the bar, maintained a general reputation for integrity and high character. Id. at 168-69.

As to Weishoff, the Court determined that he was a knowing participant to the improper disposition of the traffic ticket, and found that his explanation, that they were "just fooling around," was not credible. Id. at 330. Although the Court held that Weishoff's behavior involved misrepresentation and conduct prejudicial to the administration of justice, the Court was

satisfied that Weishoff sought no personal profit and thought he was doing someone a "favor." Id. at 331.

The Court rejected Weishoff's argument that, because he had resigned as municipal prosecutor, he should be reprimanded like Hardt. Id. at 331-32. The Court distinguished the two cases, finding that Hardt had "suffered the ignominy of being removed from his judgeship for misconduct in office" and that, by virtue of such removal, could not thereafter hold judicial office. Id. at 331.

The Court found that the principles enunciated in In re Mattera, 34 N.J. 259, 275-276 (1961), "[j]ustice is the right of all men and the private property of none. The judge holds this common right in trust, to administer it with an even hand in accordance with the law. A judge who does 'favors' with his office is morally an embezzler" applied with equal force to municipal prosecutors. Ibid. In imposing a one-year suspension, the Court determined that Weishoff's conduct could not be condoned, that the improper disposition of a traffic ticket undermines the judicial process, and that "[p]articipation in such disposition by the municipal prosecutor makes it that much more grievous." Id. at 331-32.

In In re Spitalnick, supra, 63 N.J. 429, and In re Sgro, 63 N.J. 539 (1973), municipal judges received two-year and six-

month suspensions, respectively, for their involvement in fixing a ticket for driving while intoxicated (DWI).

Spitalnick approached Sgro about dismissing a DWI ticket for his former client. Id. at 431. Spitalnick marked the ticket "not guilty" and noted on it that the defendant was under medical treatment at the time of the DWI. Ibid. He did nothing to verify the defendant's excuse to him about his medical condition. Ibid. Sgro dismissed the ticket. Ibid. In imposing discipline, the Court considered mitigating circumstances, including Spitalnick's prior clean record, voluntary admission of guilt, ultimate cooperation with law enforcement, lack of personal gain, and the fact that it was a single incident in a "wrongheaded and highly improper attempt to 'aid' a despondent client." Id. at 432. In imposing a two-year suspension, the Court wrote:

> Respondent's activities, however, hold a deeper significance in that they expose the probity of the Bench and Bar to question. This Court cannot allow the integrity of the judicial process to be compromised in any way by a member of either Bench or Bar. This is especially so where, as here, the particulars demonstrate that the proper channels of justice have been diverted. We must guard not only against the spectacle of justice corrupted in one instance, but against the subversion of confidence in the system itself. A community without certainty in the true administration of justice is a community without justice.

> Nowhere can the community be more sensitive to the regularities -- and irregularities -- of judicial administration than at the local level. While on the grand scale of events a traffic violation may be of small significance, the corruption of judicial administration of a Municipal Court is of paramount importance. Such conduct, visible and apparent to the community, destroys the trust and confidence in our institutions upon which our entire governmental structure is predicated. We cannot and will not tolerate members of the profession subverting judicial integrity at any level, for the damage is irreparable.
>
> [Ibid.]

As to Sgro (six-month suspension), the Court considered that he had resigned his position as a municipal court judge; that, although he knew it was improper to dismiss the ticket without the appropriate medical information, he did so relying on Spitalnick, who had considerable experience and had prevailed upon him to act improperly; that he received no financial gain; and that he had a good reputation in the community. In re Sgro, supra, 63 N.J. at 539.

Recently, the Court has disciplined three municipal court judges for fixing tickets. In In re Molina, 216 N.J. 551 (2014), the attorney, who was the chief judge of the Jersey City Municipal Court, received a six-month suspension for adjudicating nine parking tickets issued to her significant other. Molina had entered a guilty plea to the third-degree crime of tampering with

public records and the fourth-degree crime of falsifying records. In the Matter of Wanda Molina, DRB 13-097 (November 7, 2013) (slip op. at 1). Molina either dismissed the tickets outright or wrote "Emergency" on them and then dismissed them, knowing that no emergency had existed. Id. at 1-2. The purpose of her actions was to avoid her significant other's payment of fines to the city. Id. at 3. Molina conceded that, as the chief judge, she either should have requested a change of venue, because of the conflict, or ensured that the tickets were paid. Ibid.

Molina presented significant mitigation, both at her sentencing hearing and before us: she deeply regretted and was embarrassed by her misconduct; she served her community and helped women and minorities for the majority of her life; she intended to compensate the city for the improperly dismissed tickets; she had no criminal history; her conduct was unlikely to recur; she resigned from her position as chief judge; she cooperated with law enforcement; she accepted responsibility for her conduct; she submitted eighteen character letters on her behalf; and she apologized publicly for her conduct. Id. at 3-4.

In imposing the criminal sentence, the judge in Molina noted that judges should be held to the highest standards to maintain the integrity of the judicial system and the public's faith in the system, and cited the need to deter Molina and others from

engaging in similar conduct. Id. at 5. The judge sentenced Molina to three years' probation, "364 [days] in the Bergen County Jail as a reverse split;" ordered her to perform 500 hours of community service; prohibited her from holding public employment; and directed her to pay restitution and penalties. Id. at 5.

In Molina, we balanced the fact that suspensions were imposed on other municipal court judges who had been involved in only one instance of ticket fixing, who received no personal benefit from their conduct, and who forfeited their positions, against Molina's compelling mitigation and her lack of a disciplinary history. We determined to impose a six-month suspension. Id. at 20. The Court agreed with that measure of discipline.

In In re Sica, 222 N.J. 23 (2015), a default matter, a Jersey City municipal court judge who disposed of tickets for her employer received a one-year retroactive suspension to the date of her temporary suspension. She was found guilty of violating RPC 8.4(b), RPC 8.4(c), and RPC 8.4(d). We found that Sica's adjudication of her employer's three traffic tickets had financial and non-financial consequences attached to it and that, in adjudicating the tickets, she had violated N.J.S.A. 2C:30-2(a).

Sica had performed legal work for Victor Sison, Esq. (whose disciplinary case is discussed below), a fellow municipal court judge, on a per diem basis. In the Matter of Pauline E. Sica, DRB 14-301 (March 26, 2015) (slip op. at 8-9). We, thus, inferred that Sica's conduct was aimed at self-benefit, in the sense that she disposed of three tickets for her employer, with whom she wished to maintain a professional relationship. Id. at 12.

Unlike some of the other cases, neither Molina nor Sica embroiled others in their ticket-fixing schemes. Nevertheless, unlike Molina, Sica advanced no mitigating circumstances. In addition, she showed no contrition or remorse for her acts. During the criminal proceedings, she stated that, although there was no legitimate reason to waive the fine, "that's the culture." Furthermore, her letter to the OAE did not acknowledge any wrongdoing on her part, but implied that she had been pursued unfairly, since no action had been taken against her employer. Ibid.

In addition, Sica did not provide the OAE with a reply to the grievance and then permitted the matter to proceed as a default. We, thus, imposed enhanced discipline, finding that her default was an aggravating factor under In re Kivler, 193 N.J. 332, 342 (2008). We found that the aggravating factors and the default nature of the proceedings warranted discipline harsher

than that imposed on Molina. We, thus, determined to impose a one-year suspension, retroactive to the effective date of her temporary suspension, which was imposed for failure to cooperate with the OAE's investigation into the matter. Id. at 12-13.

In In re Sison, 227 N.J. 138 (2016), the attorney, who was a part-time Jersey City municipal court judge and employed Sica in his law firm, received a three-month suspension for his part in the "ticket-fixing" schemes underlying the Molina and Sica matters, above. He was found guilty of violating RPC 8.4(b). In the Matter of Victor G. Sison, DRB 15-333 (July 20, 2016) (slip op. at 18). By way of a plea agreement with the Attorney General's Office, Sison, who had been charged with second-degree official misconduct, was given credit for his cooperation with both law enforcement and the OAE, and was allowed to enter into the pre-trial intervention program. Id. at 3-4. Sison had gone to both Molina and Sica to secure the preferential treatment, including dismissal, of tickets issued to him, his wife, and his son. Id. at 4-5.

We determined that, except for his inconsistent testimony during the ethics hearing, Sison's matter did not include the aggravating factors present in Sica. Id. at 24. Like Molina, Sison presented significant mitigation for consideration: he was a relatively new judge at the time of his misconduct; his

misconduct involved only four tickets; he had not tampered with any public records; he was regretful and contrite; he cooperated with law enforcement; he was seventy-two years old at the time discipline was imposed; and he submitted compelling character evidence on his behalf. Id. at 24.

A reprimand is typically imposed for a misrepresentation to disciplinary authorities, so long as the lie is not compounded by the fabrication of documents to conceal the misconduct. See, e.g., In re DeSeno, 205 N.J. 91 (2011) (attorney misrepresented to the district ethics committee the filing date of a complaint on the client's behalf; the attorney also failed to adequately communicate with the client and failed to cooperate with the investigation of the grievance; prior reprimand); In re Sunberg, 156 N.J. 396 (1998) (attorney lied to the OAE during an ethics investigation of the attorney's fabrication of an arbitration award to mislead his partner and failed to consult with a client before permitting two matters to be dismissed; no prior discipline); and In re Powell, 148 N.J. 393 (1997) (attorney misrepresented to the district ethics committee, during its investigation of the client's grievance, that his associate had filed a motion to reinstate an appeal when the motion had not yet been filed; the attorney's misrepresentation was based on an assumption, rather than an actual conversation with the

associate about the status of the matter; the attorney also was guilty of gross neglect, lack of diligence, and failure to communicate with the client; prior reprimand).

Here, respondent's misconduct is comparable to that of the attorney in Weishoff, who improperly dismissed a traffic ticket while serving as a municipal prosecutor (one-year suspension), and the attorney in Spitalnick, who manipulated a municipal court judge to improperly dismiss a ticket for his client (two-year suspension). Like those attorneys, respondent abused her position as a public officer and, although there is insufficient evidence of any specific personal or pecuniary interest on her part in the outcome of Spork's ticket, in our view, she nonetheless manipulated Judge Novak, via written misrepresentations, to dismiss the speeding ticket, and provided Spork a benefit not normally bestowed upon other members of the public. Simply put, she did so because she could. According to her own sworn testimony, she did this, without hesitation, in the custom of preferential treatment that was not uncommon in the court in which she regularly appeared on behalf of the State of New Jersey. She clearly viewed her misconduct as nothing more than prosecutorial discretion and exhibited no genuine awareness or acknowledgement of its impropriety.

Compared to the discipline recently imposed by the Court in <u>Molina</u>, <u>Sica</u>, and <u>Sison</u>, however, the special master's recommendation that respondent be suspended for two years is severe. In those cases, the attorneys were sitting municipal judges who engaged in an overlapping ticket-fixing scheme for their significant other, employer, and themselves and family members, respectively. Despite the more egregious breadth of their misconduct and the blatant, self-serving abuse of their higher public offices, they received significantly less discipline than recommended in this case. It is true that Molina and Sison advanced more compelling mitigation than present in this case, but Sica did not, and also defaulted in her matter, resulting in enhanced discipline.

On the other hand, Molina, Sica, and Sison did not manipulate others while engaging in misconduct, but, rather used their elevated positions, as municipal judges, to carry out their schemes. Here, respondent involved Judge Novak, without his knowledge, in her decision to improperly dismiss Spork's ticket. Additionally, as noted by the special master, respondent has neither shown remorse nor manifested an understanding of the gravity of her misconduct, but, rather, accepted it as "business as usual" in the towns she was entrusted to represent on behalf of the citizens of New Jersey. Moreover, respondent was less

than truthful in her interaction with both the Hunterdon County Prosecutor's Office and the OAE during the pendency of their respective investigations.

In mitigation, respondent has no prior discipline during her twenty-seven years of practice. As set forth above, we are not swayed by the parties' respective arguments regarding the respondent's position on the relinquishment of her municipal appointments pending the Court's ultimate disposition in this matter. For all of these reasons, we determine that a six-month suspension and a permanent bar from serving as a municipal prosecutor in the State of New Jersey is the proper quantum of discipline in this matter. Additionally, we recommend that the Court refer this matter to the AOC for additional investigation into respondent's admitted history of preferential dismissals in municipal court cases.

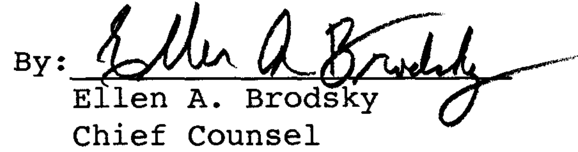
Although Members Boyer, Singer, and Zmirich voted for the imposition of a six-month suspension for respondent's misconduct, they disagreed with the determination that respondent permanently be barred from serving as a municipal prosecutor in the State of New Jersey.

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
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

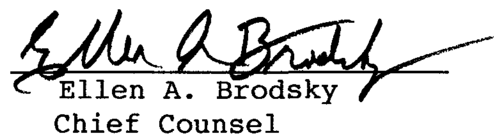
In the Matter of Mary R. Mott
Docket No. DRB 16-253

Argued: November 17, 2016

Decided: March 31, 2017

Disposition: Six-month suspension

Members	Six-month Suspension	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