SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. 17-175
District Docket No. XIV-2015-0343E

IN THE MATTER OF	:
RICHARD L. PRESS	:
AN ATTORNEY AT LAW	:

Decision

Argued: July 20, 2017

Decided: November 17, 2017

Hillary K. Horton appeared on behalf of the Office of Attorney Ethics.

Robert E. Ramsey 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 motion for reciprocal discipline, pursuant to R. 1:20-14(a), filed by the Office of Attorney Ethics (OAE). The motion was based on respondent's June 9, 2015 one-year suspension by the United States District Court, District of New Jersey (District Court), and his August 23, 2016 one-year suspension, retroactive to June 9, 2015, by the United States Court of Appeals, Third Circuit (Third Circuit). Respondent

was found guilty of violating RPC 3.3(a)(1) (knowingly making a false statement of material fact to a tribunal) and RPC 4.1(a)(1) (knowingly making a false statement of material fact to a third person).

The OAE recommended either a three-month or a six-month suspension. Respondent urges the imposition only of a censure. We determine that a censure is sufficient discipline for respondent's misconduct.

Respondent was admitted to the New Jersey bar in 1978. In 1988, he received a private reprimand for improperly soliciting his former law firm's clients and removing 100 files belonging to that firm without the firm's knowledge or consent. In the Matter of Richard L. Press, DRB 88-199 (October 25, 1988).

In 2009, respondent was reprimanded for committing the fourth-degree crime of criminal mischief, by purposely or knowingly damaging seven motor vehicles by breaking off the windshield wipers. He was admitted into the pre-trial intervention (PTI) program. In addition to the standard PTI conditions, he was required to make full restitution to the victims and to continue treatment with his mental health provider. In re Press, 200 N.J. 437 (2009). The Court ordered that, within sixty days, he submit to the OAE proof of his fitness to practice law.

Respondent represented a plaintiff before the Honorable Joseph H. Rodriguez, D.C.N.J., in a Family and Medical Leave Act (FMLA) case. Judge Rodriguez granted summary judgment in favor of the plaintiff on the issue of liability, but denied summary judgment on the issue of damages because of confusion in the record, which respondent failed to clarify in several pre-trial submissions. Judge Rodriguez had scheduled a damages trial on April 18, 2011, but changed it to a pretrial status conference to discuss proof of damages. The trial was then scheduled to start the following day, April 19, 2011.

On April 18, 2011, respondent was almost an hour late for the conference, claiming that he had overslept, even though initially he had asserted that he had been caught in traffic. When the judge requested respondent's documentary proof of damages, respondent maintained that he was not aware of the reason for the conference and, therefore, had brought only his trial bag, not the entire case file, which contained the necessary documentation. Judge Rodriguez adjourned the conference until the afternoon to enable respondent's office to deliver the documents to the courthouse. At no time did respondent inform the judge the he was "ill, stressed, or sleep deprived, nor did he exhibit behavior that caused concern about his ability to represent his client."

After the morning session concluded, respondent remained in the jury room to review documents from his trial bag. He later claimed that the trial bag remained in the jury room when he left for lunch, and, when he returned, his trial bag was missing. He, thereafter, informed Judge Rodriguez that his trial bag had been stolen, but did not request a postponement of the conference or trial and never retraced his steps to check other areas of the courthouse or elsewhere for the bag.

Concerned about a security breach in the courthouse, Judge Rodriguez, on the record, repeatedly questioned respondent about the missing bag to understand fully respondent's contentions that the bag had been stolen. When respondent stated that he intended to file a police report, Judge Rodriguez suggested that he do so with the Federal Protective Services (FPS).

Notwithstanding respondent's representation that he could proceed with an argument on damages without the full case file, in light of the potential security breach, the judge adjourned for the day to "utilize [] the resources of the Marshals Service and the Court Security Officers, and [his] staff to search the entire area and the building to determine how a briefcase could have been stolen."

After Judge Rodriguez adjourned the hearing, a courier delivered respondent's file to the courthouse. However, respondent

did not provide the judge with "purported documentary proof of damages." Instead he took the case file home.

Respondent reported the missing bag to a Camden Courthouse FPS officer, who informed respondent that he would review security camera footage. Respondent encouraged him to do so.[1] A "full scale" investigation ensued, involving "Judge Rodriguez, his staff, Court departments, and agencies." The footage from the security camera revealed that respondent had carried the trial bag out of the jury room and then out of the courthouse shortly before noon, on April 18, 2011.

The following day, because respondent failed to present proof of damages, Judge Rodriguez granted summary judgment on damages to the defendant. Thereafter, the judge confronted respondent about the camera footage. Respondent made excuses for his conduct, including that he could not recall what had occurred on the preceding day. Judge Rodriguez informed respondent that he would have to report his conduct to disciplinary authorities and, potentially, a criminal investigation could ensue because respondent "also attempted to file a police report."

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[1] Respondent had previously appeared before Judge Rodriguez, was familiar with the courthouse, and, therefore, knew that it was equipped with security cameras.

Judge Rodriguez referred the matter to ethics authorities. Respondent then was charged with making misrepresentations of material fact to the judge and the FPS officer, in violation of RPC 3.3 and RPC 4.1, respectively. At the February 19, 2014 disciplinary hearing held before Judge Shipp, respondent maintained that

> it was his "absolute belief" that he had left his trial bag in the jury room, that he had no 'recollection' of leaving with it . . . and that he had no "conscious realization that [he] was fabricating something" . . . explaining that he had been sleep deprived from dealing with his mother's dialysis treatment in New York while running his law practice in New Jersey.[] He insisted that it would be "virtually impossible [and against his] nature" to mak[e] such statements that would be so overtly, incredibly false." . . [Respondent] also explained that he "voluntarily" spoke with the FPS officer with full knowledge that there were cameras in the courthouse, which suggested he had not knowingly made a misrepresentation. . . . [Respondent] emphasized that he held Judge Rodriguez in the "highest regard" and would not disrespect the judge by making "such an outrageous claim."
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> [Respondent] testified that he felt so ashamed and guilty about the incident that he had suicidal thoughts, nearly jumped off the roof of an office building later that day, and eventually checked himself into a hospital, where he remained for nearly a week. Thereafter, [respondent] began treatment with a new psychiatrist and joined the Lawyers [sic] Assistance Program. Several judges in the District of New Jersey, including Judge Rodriguez, issued orders excusing him from jury trials and summary

judgment motions in his cases for six months, so that he could address his medical issues.

[Ex.F5.][2]

As to respondent's prior discipline for the damage he caused to vehicles, he explained that, at the time of his arrest, his life was "spiraling out of control" and he was gambling and drinking. He was having personal problems and was self-destructive, with himself, his family, and his law practice. He had been prescribed "a lot" of medications by his former psychiatrist, with whom he treated from 2005 until April 2011, when he was hospitalized at Cooper Medical Center for psychiatric problems. Respondent claimed that, after he was released from Cooper, he started treatment with a therapist, changed psychiatrists, entered the Lawyers' Assistance Program (LAP) (but, at the time of the hearing, had not been to LAP in six months), withdrew from the medications he had been prescribed, stopped drinking, and put himself on the permanent exclusionary list at casinos.

In addition to other evidence, Judge Shipp considered the telephonic testimony of respondent's then psychiatrist, Dr. Edward Black, who began treating respondent "several months

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[2] Exhibit F refers to the February 29, 2016 Third Circuit's opinion on respondent's Appeal from the order of the District Court.

after the trial bag incident." The psychiatrist testified that, initially, he had diagnosed respondent with "an adjustment reaction with mixed emotions, possibly major depression, and probably – possibly, attention deficit disorder." His "final working diagnosis" was that respondent suffered from bipolar disorder. Black weaned respondent off the medications he had been prescribed and, to help him deal with his excessive anxiety and excessive mood swings, prescribed an antianxiety medication.

Black testified further that there was a possibility that the medications respondent's former psychiatrist prescribed "may have created a memory deficit, but he did not testify to a medical certainty that [respondent] forgot what happened to his trial bag." Moreover, he admitted that he relied on respondent's representations in forming his opinion and lacked direct knowledge of respondent's condition at the time of the incident because he was not treating respondent at that time.

On February 4, 2015, Judge Shipp issued a report and recommendation, finding clear and convincing evidence that respondent violated RPC 3.3 and RPC 4.1. He concluded further that, although RPC 8.4(c) had not been charged, his violation of that Rule constituted an aggravating factor. Judge Shipp found aspects of respondent's testimony neither credible nor

persuasive. Concluding that respondent had not proven his medical defense, Judge Shipp recommended that respondent be suspended for one year, that he pay costs associated with the proceedings, and that he submit a mental health certification of his fitness to practice law prior to reinstatement.

Judge Shipp determined that there was no indication in the proceedings that respondent would have sought treatment for his prescription drug abuse if the incident before Judge Rodriguez had not occurred. Moreover, respondent entered LAP only after a New Jersey Superior Court judge required him to do so in conjunction with the proceedings before her.

Respondent filed objections to Judge Shipp's report and recommendation. On June 9, 2015, the full District Court adopted Judge Shipp's report and recommendation and imposed a one-year suspension, which began on June 9, 2015. Respondent filed a notice of appeal on July 5, 2015.

On appeal, the Third Circuit found that, during the hearing, both respondent and Judge Rodriguez testified that respondent was functioning well enough to represent his client in the FMLA matter; respondent never alerted Judge Rodriguez to any personal medical issues that impacted him that day; and respondent's conduct was "flatly inconsistent with his

statement that his bag was stolen; he was seen on camera leaving the courthouse with it."

The Third Circuit found further that:

> [Respondent] engaged in this conduct after already having been late for the proceeding and professing he was unaware that the trial judge wanted to discuss the proof of damages, which apparently was a weak part of the FMLA case, and not having the required damages evidence with him. The only evidence [respondent] offered to refute the camera footage was a plea of memory lapse or forgetfulness, which the District Court judged to be incredible, particularly in light of [respondent's] ability to recall many other details of April 18 with specificity.
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> [Ex.F10.]

The Third Circuit brought reciprocal disciplinary proceedings against respondent. The Standing Committee on Attorney Discipline of the Third Circuit (Committee) rejected respondent's arguments that his conduct warranted substantially different discipline and that his due process rights were violated. As to respondent's due process claim, the court determined that his rights had not been violated because he had notice of the charges and an opportunity to be heard.

The Committee found further that respondent's false statements to the court "relate[d] to an extremely sensitive topic – security in a secured corridor of a federal courthouse – and caused concern that a security breach had occurred in the

courthouse." The Committee determined that respondent's conduct wasted Judge Rodriguez's time as well as his staff's time and, therefore, adversely affected the administration of justice.

The Committee rejected respondent's argument that the sentence imposed was excessive in light of the mitigation he presented, which related to his mental state at the time of the misconduct and his long-term prescription drug abuse. Although respondent expressed remorse for his actions and contended that he could not recall what happened to his trial bag, the Committee found that he was otherwise able to recall many other aspects of the day in question.

The Committee highlighted the fact that respondent did not begin treatment with Dr. Black for more than three-and-one-half months after the incident and, further, that Black did not have personal knowledge of the incident and "[i]mportantly," admitted that his testimony during the disciplinary hearing was based "solely on [respondent's] word to him." Thus, Black's opinion was not based on his direct observations of respondent, but rather on medical records he later received. The Committee deferred to Judge Shipp's credibility findings, rejecting respondent's testimony regarding his alleged memory lapse as to the missing trial bag and Black's subsequent testimony. Although Black testified that respondent might have suffered

memory loss during the April 18 and 19, 2011 hearings, nothing in Black's report suggested that respondent lacked the ability to understand the unethical nature of his actions.

The Committee, thus, recommended the imposition of reciprocal discipline.

On August 23, 2016, based on the Committee's report and recommendation, the Third Circuit suspended respondent from practicing law before it for one year, nunc pro tunc, to June 9, 2015.

Respondent notified the OAE of the District Court suspension.

The OAE maintained that respondent's unethical conduct before the District Court would result in lesser discipline in this jurisdiction. Citing the following cases, the OAE noted that lack of candor to a tribunal results in a wide range of discipline: In the Matter of Richard S. Diamond, DRB 07-230 (November 15, 2007) (admonition for attorney who filed certifications with the family court making numerous references to attached psychological/medical records, which were actually mere billing records from the client's medical provider; although the court was not misled by the mischaracterization of the documents, the conduct nevertheless violated RPC 3.3(a)(1)); In the Matter of Robin K. Lord, DRB 01-250

(September 24, 2001) (admonition for attorney who failed to reveal her client's real name to a municipal court judge when her client appeared in court using an alias; unaware of the client's significant history of motor vehicle infractions, the court imposed a lesser sentence; in mitigation, the attorney disclosed her client's real name to the municipal court the day after the court appearance, whereupon the sentence was vacated); In re Manns, 171 N.J. 145 (2002) (attorney reprimanded for misleading the court, in a certification in support of a motion to reinstate the complaint, as to the date the attorney learned of the dismissal of the complaint; the attorney also lacked diligence in the case, failed to expedite litigation, and failed to properly communicate with the client; prior reprimand); In re Whitmore, 117 N.J. 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 DWI charge had intentionally left the courtroom before the case was called, resulting in the dismissal of the charge); In re Vella, 170 N.J. 180 (2004) (three-month suspension for assisting a client in a divorce matter to conceal the death of the client's father from the court, opposing counsel, and the decedent's spouse); In re Norton and Kress, 128 N.J. 520 (1992) (both the prosecutor and

defense counsel were suspended for three months for permitting the dismissal of a DWI charge; although the attorneys participated in a representation to the court that the arresting officer did not wish to proceed with the case, they did not disclose that the reason was the officer's desire to give a "break" to someone who supported law enforcement); In re Telson, 138 N.J. 47 (1994) (six-month suspension for attorney who concealed a judge's docket entry dismissing his client's divorce complaint, the attorney obtained a divorce judgment from another judge without disclosing that the first judge had denied the request; the attorney then denied his conduct to a third judge, only to admit to this judge one week later that he had lied because he was scared); In re Cillo, 155 N.J. 599 (1998) (one-year suspension for attorney who, after misrepresenting to a judge that a case had been settled and that no other attorney would be appearing for a conference, obtained a judge's signature on an order dismissing the action and disbursing all escrow funds to his client; the attorney knew that at least one other lawyer would be appearing at the conference and that a trust agreement required that at least $500,000 of the escrow funds remain in reserve); and In re Kornreich, 149 N.J. 346 (1997) (three-year suspension for attorney who had been involved in an automobile accident and

then misrepresented to the police, to her lawyer, and to a municipal court judge that her babysitter had been operating her vehicle; the attorney also presented false evidence in an attempt to falsely accuse the babysitter of her own wrongdoing).

The OAE maintained further that a violation of RPC 4.1 generally results in a reprimand, citing In re Lowenstein, 190 N.J. 59 (2007) (attorney failed to notify an insurance company of a lien that had to be satisfied from settlement proceeds, to avoid satisfaction of the lien).

The OAE argued that the above precedent would ordinarily justify imposing either a censure or three-month suspension in this case. However, a suspension was warranted here based on the clear misrepresentation to Judge Rodriquez, respondent's disciplinary history, and the theory of progressive discipline.

The OAE asserted that respondent did not show much remorse or take responsibility for his actions, but conceded that the incident appeared to be "relatively isolated" and that there was no indication that he has been "untruthful or made misleading statements to other tribunals or in other cases." In addition to a suspension, the OAE recommended that respondent be required to provide proof of fitness to practice law from a mental health professional prior to his reinstatement.

In a letter-brief dated June 26, 2017, respondent's counsel maintained that a censure was appropriate discipline, as it would protect the public and deter respondent from engaging in future misconduct.

Counsel maintained that neither respondent's disciplinary history nor the facts of this case warranted the application of progressive discipline. Counsel asserted that respondent received a private reprimand twenty-nine years ago for dissimilar conduct and a reprimand eight years ago for engaging in criminal mischief. Moreover, he noted the OAE's own characterization of respondent's conduct as relatively isolated and its observation that there were no other indications that respondent was untruthful or had made misleading statements to other tribunals.

Counsel argued that the only common element in this and respondent's 2009 reprimand was respondent's psychiatric illness — over-medication, gambling, and alcohol abuse. He further maintained that respondent's remorse and the gravity of his misconduct almost resulted in his suicide, rather than "a prolonged stay" in the hospital for psychiatric treatment.

Counsel advanced, as mitigating factors, respondent's health and personal and family problems. Moreover, counsel asserted that respondent's misconduct was "rooted in poor

judgment, triggered by over medication, lack of sleep and untreated psychiatric illness." Counsel argued further that the six-year passage of time since the reprimand also should be considered a mitigating factor.

Finally, counsel suggested that suspending respondent at this juncture, after he has made great strides at rehabilitation, would serve no salutary purpose but, rather, would amount "to mere punishment as opposed to discipline calculated to protect the public and deter future misconduct."

Attached to respondent's brief were: (1) respondent's certification attesting that he is a sole practitioner handling fifty to sixty cases; he receives weekly and bi-weekly treatment from Dr. Black and a licensed clinical social worker; Black continues to reduce the medications he prescribed; respondent attends Alcoholics Anonymous (AA) and LAP meetings; he has remained abstinent from alcohol and gambling since April 2011 and put himself on a lifetime exclusionary ban with the New Jersey Casino Control Commission; he was solely responsible for his conduct, and when he was confronted in court about that misconduct, he felt such a sense of shame, remorse, and mortification that he contemplated suicide but, instead, obtained the psychiatric treatment he needed; (2) a June 14, 2017 letter confirming that respondent has been attending

weekly meetings of Lawyers Concerned for Lawyers (the letter did not indicate the length of time that he has been attending the meetings); and (3) Dr. Black's June 14, 2017 letter, stating that he has "seen" respondent over 250 times since August 6, 2011; that respondent "is continuing to function successfully at a very high level;" and that, at the present time, he can see no reason "from a medical point of view, why he cannot continue to practice." Black also attached his June 10, 2016 report submitted to the Third Circuit Committee.

* * *

We determine to grant the OAE's motion for reciprocal discipline. Pursuant to R. 1:20-14(a)(5), "a final adjudication in another court, agency or tribunal, that an attorney admitted to practice in this state . . . is guilty of unethical conduct in another jurisdiction . . . shall establish conclusively the facts on which it rests for purposes of a disciplinary proceeding in this state."

Reciprocal disciplinary proceedings in New Jersey are governed by R. 1:20-14(a)(4), which provides:

> The Board shall recommend imposition of the identical action or discipline unless the Respondent demonstrates, or the Board finds on the face of the record upon which the discipline in another jurisdiction was predicated that it clearly appears that:

> (A) the disciplinary or disability order of the foreign jurisdiction was not entered;
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> (B) the disciplinary or disability order of the foreign jurisdiction does not apply to the Respondent;
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> (C) the disciplinary or disability order of the foreign jurisdiction does not remain in full force and effect as the result of appellate proceedings;
>
> (D) the procedure followed in the foreign matter was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process; or
>
> (E) the unethical conduct established warrants substantially different discipline.

Subsection (E) applies because the unethical conduct warrants substantially different discipline.

Bound by the District Court and Court of Appeals findings, we find that respondent is guilty of violating RPC 3.3(a)(1) and RPC 4.1(a)(1). Respondent's conduct was serious. He made a misrepresentation not only to the court, but also to an FPS officer, the effect of which had wide-scale consequences. Respondent's client's case was adjourned, and, as the Third Circuit Committee reported, "[a] full scale investigation" ensued involving "Judge Rodriguez, his staff, Court departments, and agencies."

Notwithstanding respondent's claim of psychiatric and addiction problems, those problems apparently did not prevent him from continuing to practice law. He certified that he currently is handling a caseload of fifty to sixty active files. Moreover, at the time of the misconduct, Judge Rodriguez was not aware that respondent was suffering from any problems.

Thus, the sole issue remaining is the appropriate quantum of discipline.

Comparing respondent's conduct to that of the above attorneys, we find that his conduct was not as serious as Cillo's (one-year suspension). Cillo, too, was before us on a motion for reciprocal discipline, based on his disbarment in the United States District Court for the Southern District of New York. In that case, during a status conference in a pending civil action in New York involving several parties, Cillo certified to the judge that the case had been settled and that no one else would appear for the conference. He presented the judge with a proposed order dismissing the New York action and requiring trust monies, held by Citibank, to be turned over immediately to one of the parties, without reserve. In the Matter of Jeffrey P. Cillo, DRB 97-223 (June 29, 1998) (slip op. at 3).

Cillo knew that at least one other attorney involved in the litigation was to attend the status conference. In addition, the terms of the order violated a trust agreement requiring that Citibank maintain a reserve in the trust. The judge signed the order with a handwritten addition that the order was based on Cillo's certification that the underlying case had been settled. Cillo did not add that notation to the copy he served on Citibank.

When the attorneys for the other parties arrived, after Cillo had left, they informed the judge of the true status of the matter. The judge then vacated the order. Although the order had been served on Citibank, it had not yet released the funds. In imposing a one-year suspension, we considered the attorney's disciplinary history, which included two private reprimands.

Clearly, respondent's conduct here was not as calculated or potentially damaging as Cillo's. Nor was respondent's conduct as egregious as the attorney's conduct in In re Vella, supra. There, Vella assisted her client in the concealment of the death of the client's incapacitated father, Jerome Kingsdorf, in Kingsdorf's divorce proceedings. Kingsdorf had been placed in a nursing home after suffering a stroke and was declared incompetent. Vella filed a divorce complaint on

Kingsdorf's behalf, as an incapacitated person. Kingsdorf died before the divorce had been finalized, a fact that was concealed from his spouse, Elizabeth, Elizabeth's attorney, and the court.

Elizabeth had consented to the divorce, as well as a lesser portion of the marital estate, because she perceived that Kingsdorf's long-term nursing care expenses would be excessive. Unbeknownst to her, Kingsdorf had died. As such, she would have stood to inherit a much larger portion of the estate than she had agreed to accept.

Elizabeth attended the divorce hearing, at which time Vella continued the "pattern of concealment," by not revealing to the court that Kingsdorf had passed away several weeks earlier. Months later, when Elizabeth learned that Kingsdorf had predeceased the judgment of divorce, she filed a motion to nullify it, which the court denied. When the Appellate Division considered the matter, it was disturbed by Kingsdorf's son having stated on Kingsdorf's death certificate that he had died divorced, without a living spouse. The Court was equally disturbed that Vella had been complicit in the fraud by failing to inform Elizabeth, her attorney, and the trial court that Kingsdorf had died before the divorce was finalized.

In imposing only a three-month suspension, we considered mitigating circumstances, including that the attorney did not actively advise her client to conceal the truth and that she had no prior discipline.

Clearly, respondent's conduct does not warrant the same degree of discipline as that imposed in Vella, notwithstanding his prior discipline. As respondent's counsel pointed out, respondent's ethics history does not demonstrate a failure to learn from prior mistakes. We find further that respondent's conduct here and in his prior matter (reprimand for criminal mischief) was fueled by his psychological, addiction, and family problems. In light of this factor, the passage of time since the incident occurred, and the positive steps respondent has taken to manage these problems, we determine that a censure is sufficient discipline.

We also determine to require respondent to provide to the OAE proof of his continued treatment and attendance at AA and LAP for a period of one year.

Members Gallipoli and Zmirich voted to impose a six-month suspension, retroactive to June 9, 2015. Member Hoberman 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 Matter of Richard L. Press
Docket No. DRB 17-175

Argued: July 20, 2017

Decided: November 17, 2017

Disposition: Censure

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

Ellen A. Brodsky
Chief Counsel