SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 17-417
District Docket No. XIV-2016-0368E

IN THE MATTER OF	:
LOGAN M. TERRY	:
AN ATTORNEY AT LAW	:

Decision

Argued: February 15, 2018

Decided: June 8, 2018

Joseph Glyn appeared on behalf of the Office of Attorney Ethics.

Respondent appeared pro se.

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

This matter was before us pursuant to R. 1:20-6(c)(1), which provides that a "hearing shall be held only if the pleadings raise genuine disputes of material fact, if the respondent's answer requests an opportunity to be heard in mitigation, or if the presenter requests to be heard in aggravation." Respondent's answer admitted the allegations of the ethics complaint, which charged him with engaging in a conflict of interest (RPC 1.7(a)(2)) and conduct prejudicial to

the administration of justice (RPC 8.4(d)). We determine to impose a censure.

Respondent was admitted to the New Jersey bar in 2003. He has no history of discipline.

In his November 8, 2017 answer to the formal ethics complaint, respondent admitted all of the essential facts of the complaint, as follows. In June 2016, respondent represented AM in criminal charges, including sexual assault upon four minors under the age of thirteen, pending against him in Superior Court of New Jersey, Burlington County.

In the days immediately prior to a jury trial scheduled for June 7, 2016, respondent communicated with his client in an attempt to collect outstanding fees, informing AM that respondent could not "provide an adequate defense" unless AM paid respondent's legal fees.[1]

Furthermore, in a text message, respondent warned AM that he would not prepare for the trial during the weekend immediately preceding it, unless he was first paid. He then

[1] According to a June 14, 2016 referral letter to the Office of Attorney Ethics (OAE) from the trial judge, the case had first been scheduled for trial in September 2015, with a jury selected and ready to be sworn, when the court learned that respondent was ineligible to practice law for failure to pay the New Jersey Lawyers' Fund for Client Protection (CPF) annual fee. The judge was forced to postpone the trial until June 2016.

wrote, "HAVE FUN IN PRISON." The maximum sentence that AM could have received exceeded 200 years.

At the inception of the trial, AM informed the judge that he no longer trusted respondent as his attorney and that he wanted to terminate their attorney/client relationship. He showed the judge screenshots of various communications from respondent and a transcript of the offending text message. The judge then granted the application for new counsel, and dismissed the jury in order to reschedule the trial for a future date, once subsequent counsel was in place.

In a July 9, 2016 letter to the OAE, respondent admitted that his actions had been unethical, and asserted that, during the fourteen-month representation, AM had been uncooperative in preparing a defense to the charges and had refused a plea offer that respondent considered favorable.

Thereafter, respondent entered into an Agreement in Lieu of Discipline (ALD) with the OAE. In it, respondent admitted that he had violated RPC 1.7(a)(2) and RPC 8.4(d).

In a July 5, 2016 letter to the OAE, attached to the ALD as an exhibit, respondent explained that he twice sought to be relieved as counsel in the case, due to AM's noncooperation and failure to pay legal fees. According to respondent, the trial

judge denied an April 2015 motion to be relieved as counsel, as well as a later motion filed in November 2015.

Under the terms of the ALD, respondent was required to satisfy only one condition: that he communicate with South Jersey Legal Services (SJLS) within thirty days and arrange to represent one pro bono client, to be selected by SJLS. Respondent was required to provide proof of his initial contact with SJLS and proof of compliance with the condition within thirty days of completion of the pro bono representation.

By letter dated August 30, 2017, Douglas E. Gershuny, SJLS' Executive Director, informed the OAE that, despite SJLS' efforts, respondent failed to complete a pro bono representation.

Therefore, via a September 8, 2017 letter, the OAE informed respondent that he had failed to satisfy the conditions of the ALD, that the diversion offer was withdrawn, and that a complaint would issue against him. In a September 18, 2017 reply, respondent admitted that he had not appeared in court on behalf of the pro bono client whom SJLS referred to him, and claimed "full responsibility" for his failure to provide the "care and attention" that the client deserved. Respondent's letter further explained that he had been "stuck" in Trenton that day on an unrelated municipal court matter.

In respect of the AM representation, respondent sought to clarify that, had AM's matter proceeded to a jury, respondent "would have provided, to the best of [his] ability, a zealous defense of [AM]."

Respondent conceded that his conduct, as set forth in the complaint and admitted in the ALD, constituted violations of RPC 1.7(a)(2) and RPC 8.4(d).

At oral argument before us, the OAE took the position that an admonition was appropriate, given the lack of aggravating factors presented.

On April 18, 2018, after oral argument before us, respondent submitted a letter asking us to consider, in mitigation, information he had omitted from his argument "out of embarrassment and shame." Without objection from the OAE, we determined to treat respondent's letter as a request to supplement his oral argument and considered the mitigation he had urged. Specifically, respondent indicated that, during the period in question, his conduct was affected by his abuse of alcohol. He further indicated that his practice was "near non-existent" due to his "disability," and that he had twice sought treatment therefor.

* * *

Following our review, we are satisfied that the record clearly and convincingly establishes that respondent was guilty of

unethical conduct. Respondent admittedly engaged in a conflict of interest in the days immediately preceding AM's trial on serious criminal charges. Frustrated by his client's noncooperation and failure to pay for legal services in the case, respondent threatened his client that, without payment of his fee, he would not prepare a zealous defense. When communicating this information to AM, respondent also texted him to "HAVE FUN IN PRISON."

RPC 1.7(a) states, in relevant part, that "a concurrent conflict of interest exists if: (2) there is a significant risk that the representation of one or more clients will be materially limited by . . . a personal interest of the lawyer."

Respondent placed his own personal interest in receiving a legal fee above his client's interest in receiving the best possible defense to the charges against him. Thus, respondent and his client's interests became widely divergent, and a conflict of interest was created.

At the first opportunity to do so on the trial date, AM alerted the judge to facts underlying the conflict, and informed the trial judge that he could no longer trust his attorney to provide a vigorous defense. Thus, we find respondent guilty of having violated RPC 1.7(a)(2).

Respondent also admitted having engaged in conduct prejudicial to the administration of justice. Indeed, as the trial judge prepared to swear in the jury, AM brought respondent's misconduct to his attention. The judge was forced to release the jury and reschedule the trial, in order to afford AM an opportunity to retain subsequent counsel. By disrupting the judicial process in that fashion, respondent wasted judicial resources, a violation of RPC 8.4(d).

Cases involving conflict of interest, absent egregious circumstances or serious economic injury to the clients, ordinarily result in a reprimand. In re Guidone, 139 N.J. 272, 277 (1994), and In re Berkowitz, 136 N.J. 134, 148 (1994). See, also, In re Simon, 206 N.J. 306 (2011) (the attorney engaged in a conflict of interest by suing an existing client for the payment of his legal fees); In re Pellegrino, 209 N.J. 511 (2010) and In re Feldstein, 209 N.J. 512 (2010) (companion cases; the attorneys simultaneously represented a business that purchased tax-lien certificates from individuals and entities for whom the attorneys prosecuted tax-lien foreclosures, violations of RPC 1.7(a) and RPC 1.7(b); the attorneys also violated RPC 1.5(b) by failing to memorialize the basis or rate of the legal fee charged to the business); In re Ford, 200 N.J. 262 (2009) (the attorney filed an answer to a civil complaint

against him and his client and then tried to negotiate separate settlements of the claim against him, to the client's detriment; prior admonition and reprimand); In re Mott, 186 N.J. 367 (2006) (attorney prepared, on behalf of buyers, real estate agreements that provided for the purchase of title insurance from a title company that he owned; notwithstanding the disclosure of his interest in the company to the buyers, the attorney did not advise buyers of the desirability of seeking, or give them the opportunity to seek, independent counsel, and did not obtain a written waiver of the conflict of interest from them); and In re Poling, 184 N.J. 297 (2005) (the attorney engaged in conflict of interest when he prepared, on behalf of buyers, real estate agreements that pre-provided for the purchase of title insurance from a title company that he owned — a fact that he did not disclose to the buyers, in addition to his failure to disclose that title insurance could be purchased elsewhere).

A reprimand is also the baseline sanction for attorneys guilty of conduct prejudicial to the administration of justice, sometimes found in the presence of other infractions and prior discipline, with mitigating factors also considered. See, e.g., In re Cerza, 220 N.J. 215 (2015) (the attorney failed to comply with an order requiring him to produce subpoenaed documents in a bankruptcy matter, a violation of RPC 3.4(c) and RPC 8.4(d); he

also exhibited a lack of diligence and failed to promptly turn over funds to a client or third person, violations of RPC 1.3 and RPC 1.15(b)); In re Gellene, 203 N.J. 443 (2010) (the attorney was found guilty of conduct prejudicial to the administration of justice and knowingly disobeying an obligation under the rules of a tribunal for failing to appear on the return date of an appellate court's order to show cause and failing to notify the court that he would not appear; the attorney also was guilty of gross neglect, pattern of neglect, lack of diligence, and failure to communicate with clients; mitigating factors were the attorney's financial problems, his battle with depression, and significant family problems; prior discipline included two private reprimands and an admonition); and In re Geller, 177 N.J. 505 (2003) (the attorney failed to comply with court orders (at times defiantly) and the disciplinary special master's direction not to contact a judge; the attorney also filed baseless motions accusing judges of bias against him; failed to expedite litigation and to treat with courtesy judges, his adversary, the opposing party, an unrelated litigant, and a court-appointed custody evaluator; used means intended to delay, embarrass, or burden third parties; made serious charges against two judges without any reasonable basis; made unprofessional and demeaning remarks toward the other party

and opposing counsel; and made a discriminatory remark about a judge; in mitigation, we considered that the attorney's conduct occurred in the course of his own child custody case).

In In re Simon, 206 N.J. 306, a reprimand was imposed on an attorney who engaged in a conflict of interest. Specifically, while representing a client facing murder charges, Simon had generated considerable pre-trial fees and expenses, but had been paid only a portion of them by relatives of the defendant. With his fees still outstanding, and prior to the schedule of a trial date, Simon sent the family four letters seeking payment. Each letter contained a warning that, if the family did not arrange for payment, he would seek to be relieved as counsel. Other correspondence to them indicated that, if payment were not forthcoming, he intended to file suit. Hearing nothing, Simon filed a motion to be relieved as counsel, which was denied. A trial date was set for four months later. Id. at 308-309.

Thereafter, Simon appealed the trial court's decision. When he learned that the family had transferred assets to another family member for a nominal sum, he filed suit against both the family member and his client, even though he allegedly never expected to collect any monies from the client. When the client learned about the suit, he contacted the court and asked that respondent be relieved as counsel. The judge then entered an

amended order doing so. At fee arbitration, Simon was awarded $55,000 against the defendant's brother and mother. Id. at 309-310.

The Court held that, "by filing suit against his client for unpaid fees while defending that client against murder charges, respondent violated RPC 1.7(a)(2) by placing himself in an adversarial relationship vis-à-vis his client and thus 'jeopardize[ing] his duty to represent [his client] with the utmost zeal.'" Id. at 318.

Similarly, and arguably more seriously, here, respondent's comments to the client telegraphed an intent to disregard his duty to represent his client "with the utmost zeal." Also similar were respondent's two unsuccessful attempts to be relieved as counsel. Like Simon, they were based, at least in part, on an inability to obtain his legal fee.

In mitigation, respondent has no prior discipline.

In aggravation, respondent's actions twice required the trial judge to intervene in the case and to release a jury on the eve of trial. Although respondent was not charged with an ethics violation in respect of the September 2015 postponement, which was occasioned by his own CPF ineligibility, it represented an earlier instance of wasting judicial resources.

Thus, as early as September 2015, respondent should have been acutely aware of his obligation in this regard.

In further aggravation, respondent's client faced over 200 years in prison, if convicted of all of the serious charges against him. To be sure, respondent was in a difficult position, having been required to continue representing an uncooperative, non-paying client in a criminal matter. Nevertheless, respondent's reaction to that predicament was one of defiance – to subvert the court's directive by "poisoning" the representation on the eve of trial.

In view of the reprimand imposed in Simon for a similar conflict of interest, and the aggravating factors present here, we determine to impose enhanced discipline, a censure.

Vice-Chair Baugh and Member Gallipoli 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 Logan M. Terry
Docket No. DRB 17-417

Argued: February 15, 2018

Decided: June 8, 2018

Disposition: Censure

Members	Censure	Did not participate
Frost	X	
Baugh		X
Boyer	X	
Clark	X	
Gallipoli		X
Hoberman	X	
Rivera	X	
Singer	X	
Zmirich	X	
Total:	7	2

Ellen A. Brodsky
Chief Counsel