SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 17-418
District Docket No. XIV-2016-0141E

IN THE MATTER OF

JOSHUA LAWRENCE GAYL

AN ATTORNEY AT LAW

Decision

Argued: February 15, 2018

Decided: June 8, 2018

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

Respondent waived appearance for oral argument.

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

This matter was before us on a motion for final discipline, filed by the Office of Attorney Ethics (OAE), pursuant to R. 1:20-13(c)(2), following respondent's guilty plea to, and conviction of, conspiracy to commit obstruction of justice, contrary to 18 U.S.C. § 371 (1994). The OAE seeks a three-year prospective suspension, with the condition that, prior to reinstatement, respondent be required to submit proof of fitness

to practice, as attested to by a qualified mental health professional approved by the OAE. Respondent urges the imposition of "a retroactive suspension for a reasonable amount of time."

For the reasons set forth below, we determine to grant the OAE's motion for final discipline and find that respondent committed a criminal act that reflects adversely on his honesty, trustworthiness or fitness as a lawyer in other respects, in violation of RPC 8.4(b), and engaged in conduct involving dishonesty, fraud, deceit or misrepresentation, in violation of RPC 8.4(c). Consequently, we determine to impose a three-year suspension, retroactive to April 7, 2017, the date on which the Court temporarily suspended respondent from the practice of law. Moreover, we condition his reinstatement on his provision of proof of fitness to practice law as attested to by a mental health professional approved by the OAE.

Respondent was admitted to the bars of New Jersey and Pennsylvania in 2006. At the relevant times, he was general counsel to VO Financial, Inc. (VO Financial), a provider of timeshare consulting services in Egg Harbor Township.

Respondent's disciplinary history is limited to a temporary suspension, imposed by the Court on April 7, 2017, following his federal conspiracy conviction. In re Gayl, 228 N.J. 468 (2017).

On March 23, 2016, respondent appeared before the Honorable Noel L. Hillman, U.S.D.J., in the United States District Court for the District of New Jersey, waived indictment, and pleaded guilty to an information charging him with one count of conspiracy to obstruct justice, a violation of 18 U.S.C. § 371.

In July 2012, respondent became general counsel to, and corporate secretary of, VO Financial, the successor corporation to the Vacation Ownership Group (VO Group). VO Financial's president was Adam Lacerda; its vice president was Ian Resnick; and its chief operating officer was Ashley Lacerda.

At the time respondent became employed by VO Financial, the Lacerdas, Resnick, and "others" were under federal indictment for conspiracy to commit mail and wire fraud while they were involved with the VO Group. Respondent knew that the Lacerdas, Resnick, "and others" had been indicted because, prior to his hiring, he had read the indictment.

The criminal trial was scheduled to begin in July 2013. Resnick continued to work for VO Financial through June of that year. The Lacerdas continued to work there through July 2013.

VO Financial maintained a "pipeline" database containing notes of contacts with its customers, copies of recordings of telephone calls, copies of documents, "tasks from one VO

Financial employee to another," and other materials. Respondent used the pipeline database in his work with the company.

During respondent's employment with VO Financial, he was aware of the developments in the criminal case. Specifically, respondent knew that the court had prohibited the Lacerdas and Resnick from communicating with any person named in the indictment or anyone identified as a witness by the government. Nevertheless, in September and October 2012, respondent wrote to and called Victim Number 1 (Victim 1), knowing that Victim 1 had told the Federal Bureau of Investigation (FBI) that the VO Group had defrauded Victim 1 and that Victim 1 was to be a witness in the criminal case. In doing so, respondent intended to "lock Victim . . . 1 into a story and elicit any statements that would be helpful to the defense in the criminal case." Respondent did not tell Victim 1 of his intention.

In a September 25, 2012 letter, respondent informed Victim 1 that respondent would be "better able to assist" Victim 1 if Victim 1 was able to "confirm in writing some information about what Victim 1 was told by the FBI." Six days later, respondent and "S.A." telephoned Victim 1. S.A. began the call by informing Victim 1 that the call was being recorded for quality assurance and training purposes. The statement was misleading because the

true purpose of recording the call was to obtain recorded statements favorable to the defense.

During the call with Victim 1, respondent summarized the allegations in the criminal case but omitted the allegation that the defendants had misrepresented to the victims that the VO Group would sell their timeshares. Respondent asked Victim 1 about Victim 1's conversations with the FBI. When Victim 1 replied that a VO Group representative had told Victim 1 that the VO Group would sell Victim 1's timeshare, respondent asserted "we do not sell timeshares," and stated that Victim 1 was confused in his/her recollection. Respondent admitted that, at the time of the call, he had no knowledge of what the VO Group representative actually had told Victim 1.

After the telephone call with Victim 1, respondent talked to Adam Lacerda about the conversation. A few minutes later, and at Lacerda's request, respondent called Victim 1 for the purpose of eliciting additional statements that were helpful to the defense, including that Victim 1 was mistaken in his/her recollection regarding the VO Group's promise to sell Victim 1's timeshare. Respondent did not tell Victim 1 that this was the purpose of his telephone call. At the end of the conversation, respondent told Victim 1 that it was "likely" and "logical" that Victim 1 had misunderstood that the VO Group sold timeshares.

Respondent admitted that he had assisted Adam and Ashley Lacerda and Ian Resnick in providing refunds to potential witnesses in exchange for executed civil releases. Respondent was aware that the Lacerdas wanted to pay the refunds, at least in part, to improve the defense's position at trial by making the recipients of the refunds "more favorably inclined to the defense."

On December 5, 2012, respondent knew that Victim 2 was a potential trial witness against Resnick, who wanted Victim 2 to accept a refund from VO Financial. Respondent also knew that Victim 2 had stated that she was represented by a lawyer. Nevertheless, on that date, respondent wrote a letter to Victim 2, urging her to accept a refund. The letter failed to inform Victim 2 that the purpose of the refund, in part, was to improve the defense's position at trial by making Victim 2 more favorably inclined to the defense.

On March 29, 2013, respondent read a note written by Resnick in the pipeline system, stating that Victim 2 had left a voicemail message asking about a refund. Resnick also wrote that he was not comfortable returning Victim 2's call because Victim 2 mentioned in the voicemail that she had spoken to the FBI. At Ashley Lacerda's request, respondent returned the call and assured Victim 2 that she would receive a refund.

On June 7, 2013, at Ashley Lacerda's direction, respondent wrote to Victim 3 and Victim 4, offering refunds in exchange for civil releases. At the time, respondent understood that these victims were potential trial witnesses. The letter failed to inform the victims that the refunds were being offered, in part, because they were potential trial witnesses.

On July 19, 2013, respondent received from the United States Attorney's Office a trial subpoena directing VO Financial to produce documents relating to thirty-six potential trial witnesses. Thereafter, respondent reviewed a copy of an e-mail from Adam Lacerda's defense attorney, Mark Cedrone, to the United States Attorney's Office, stating that he had advised his client to remove himself from any and all aspects of VO Financial's "response/reaction to the subpoena."

Respondent identified materials in the pipeline system that were subject to the subpoena, including a recorded conversation between VO Financial employee Dennis Nadeau and one of the individuals listed in the subpoena. On July 19, 2013, respondent listened to the recording and then advised Adam Lacerda that a portion of it "was not good for Dennis Nadeau and that [Lacerda] should warn Dennis Nadeau before he testified at trial." After their conversation, respondent saw Lacerda access the pipeline

system to listen to the recording. Respondent knew that Lacerda had the ability to delete materials from the pipeline system.

Respondent prepared, on behalf of VO Financial, a CD of materials from the pipeline system that was responsive to the subpoena. Among the materials was a copy of the Dennis Nadeau recording that respondent had played for Lacerda. Respondent did not verify that the copy of the recording of that conversation on the CD was the same as that which he had played for Lacerda. Thereafter, respondent listened to the recording on the CD and realized that Lacerda had altered it by deleting "the troubling portion" that respondent had brought to Lacerda's attention.

On July 23, 2013, respondent prepared and signed a certification, which was produced to the United States Attorney, along with the CD. In the certification, respondent stated that Cedrone had instructed him not to consult with the defendants regarding the document production and that he had "not consulted with any of the defendants regarding the document production and specifically to what documents would be considered responsive to the subpoena." Respondent admitted that his statement was false because he had consulted with Adam Lacerda.

On July 19, 2017, Judge Hillman presided over respondent's sentencing hearing. During the hearing, several witnesses

testified in respondent's behalf. The judge also noted that his courtroom was filled with respondent's supporters.

According to the judge, the sentencing guidelines called for imprisonment from twenty-seven to thirty-three months. In determining that a one-year-and-one-day prison term was appropriate, the judge acknowledged several mitigating factors: (1) respondent's mental health issues, including "certain cognitive deficiencies," tied to a bout of viral meningitis, and a "personality trait" that resulted in "an unhealthy tolerance for risk that may explain or put in context his decision to work for VO" as well as his gambling addiction; (2) his acknowledgment of wrongdoing; (3) his efforts at rehabilitation, including his willingness "to discuss with family and friends and professional associates the difficulties that he has faced, his acknowledgment of it, and his efforts to deal with it" and his continued willingness to work to support his family; (4) the collateral consequences suffered by respondent, which included the loss of his law license; (5) his "civic engagement," which reflected "an effort to be a positive role model and have [a] positive impact in his community;" and (6) his concern for and support of his family, which suggested "a relatively low risk of recidivism."

Yet, Judge Hillman also remarked: "[I]n my 14 years as a prosecutor and 11 years as a judge, I have never seen a more vigorous effort at obstruction." The judge observed that respondent "knew or should have known very early that he had signed on to a criminal enterprise," but respondent "continued to assist [that enterprise] in ways that made a mockery of the investigation, the investigative agency, the prosecutors, and this Court." In Judge Hillman's view, it was necessary to send a message to other lawyers that, "when they sign on to the crimes of their clients, there's a price to pay beyond just losing your license."

Judge Hillman sentenced respondent to one year and one day in federal prison and ordered him to pay a $5,000 fine and a $100 special assessment to the United States. Upon release from prison, respondent was to be on supervised release for three years.

* * *

Following a review of the record, we determine to grant the OAE's motion for final discipline. Final discipline proceedings in New Jersey are governed by R. 1:20-13(c). Under that Rule, a criminal conviction is conclusive evidence of guilt in a disciplinary proceeding. R. 1:20-13(c)(1); In re Magid, 139 N.J. 449, 451 (1995); In re Principato, 139 N.J. 456, 460 (1995).

Respondent's guilty plea to and conviction of conspiracy to commit obstruction of justice establishes a violation of RPC 8.4(b). Pursuant to that Rule, it is professional misconduct for an attorney to "commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer." Respondent's conduct also violated RPC 8.4(c). Hence, the sole issue is the extent of discipline to be imposed. R. 1:20-13(c)(2); In re Magid, 139 N.J. at 451-52; In re Principato, 139 N.J. at 460.

In determining the appropriate measure of discipline, we must consider the interests of the public, the bar, and the respondent. "The primary purpose of discipline is not to punish the attorney but to preserve the confidence of the public in the bar." Ibid. (citations omitted). Fashioning the appropriate penalty involves a consideration of many factors, including the "nature and severity of the crime, whether the crime is related to the practice of law, and any mitigating factors such as respondent's reputation, his prior trustworthy conduct, and general good conduct." In re Lunetta, 118 N.J. 443, 445-46 (1989).

Here, respondent conspired with Adam Lacerda "and others" to "corruptly endeavor to influence, obstruct, and impede the

due administration of justice," contrary to 18 U.S.C. § 371,[1] by misleading witnesses, attempting to improperly influence them, contacting witnesses in violation of court-ordered bail conditions, making false statements to the court, and presenting altered documents to the court in response to a trial subpoena. In In re Verdiramo, 96 N.J. 183, 186 (1984), the Court declared that "ethical misconduct of this kind -- involving the commission of crimes that directly poison the well of justice -- is deserving of severe sanctions and would ordinarily require disbarment."

In Verdiramo, the attorney was an administrative aide to former United States Congressman Henry Helstocki. Id. at 184. He also served as Helstocki's lawyer in a federal criminal matter. Ibid. At Helstocki's request, Verdiramo went to Helstocki's office, where he met Helstocki and Joel Urdang, who was about to

---

[1] 18 U.S.C. § 371 provides:

> If two or more persons conspire either to commit any offense against the United States, or to defraud the United States, or any agency thereof in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy, each shall be fined under this title or imprisoned not more than five years, or both.

testify before a federal grand jury on the issue of Helstocki's alleged failure to report certain income to the IRS. Ibid.

At the time of the meeting, Verdiramo knew that Helstoski's employee, John Mazella, had previously appeared before the grand jury and made certain misstatements during his testimony. Ibid. He also knew that Urdang's testimony could contradict Mazella's. Ibid. During a brief conversation with Urdang, Verdiramo stated -- "Look, do me a favor. Just don't hurt the old guy, will you?" Ibid. At his disciplinary hearing, Verdiramo acknowledged that he "was asking Urdang to lie before the Grand Jury." Ibid.

Verdiramo pleaded guilty to obstruction of justice by attempting to influence a witness before the United States Grand Jury, which, the Court noted, "constitutes grave misconduct that goes to the heart of the administration of justice." Id. at 185. Indeed, the Court likened "[p]rofessional misconduct that takes deadly aim at the public-at-large" to knowing misappropriation of client funds. Id. at 186. Thus, the Court continued: "[b]ecause such a transgression directly subverts and corrupts the administration of justice, it must be ranked among the most egregious of ethical violations." Ibid.

In Verdiramo, the Court acknowledged that, in the past, it had not been "uniform" in fashioning the appropriate measure of discipline for "serious ethical violations" involving "criminal

acts of dishonesty that directly impact the administration of justice." Ibid. The Court also recognized that it had not disbarred the attorneys "[i]n several recent cases involving crimes and ethical breaches of this magnitude." Id. at 187. Despite the Court's declaration that attorneys who engage in such misconduct ordinarily must be disbarred, it did not impose that sanction on Verdiramo. Ibid.

By the time the Court rendered its decision in Verdiramo, eight years had passed since the commission of the crime and more than seven years since the imposition of a temporary suspension. Id. at 187. In the Court's view, "the public interest in proper and prompt discipline [had been] necessarily and irretrievably diluted by the passage of time," rendering disbarment "more vindictive than just." Ibid. Thus, the Court determined that, "under the special circumstances present in this case, the interests of the public and the legal profession will be served adequately" by the imposition of a "time-served" suspension. Ibid.

In In re Convery, 166 N.J. 298, 307 (2001), the Court reiterated that, in Verdiramo, it had "made clear the seriousness of the transgressions that directly subvert and corrupt the administration of justice." Thus, the Court repeated, "'ethical misconduct . . . involving the commission of

crimes that directly poison the well of justice [] is deserving of severe sanctions and would ordinarily require disbarment.'" Ibid. Based on significant mitigating circumstances, however, the Court imposed a six-month suspension.

Since Verdiramo and Convery, attorneys who have been convicted of obstruction of justice, or conspiracy to obstruct justice, have continued to receive discipline ranging from a long-term suspension to disbarment. See, e.g., In re DeSantis, 171 N.J. 142 (2002) (one-year suspension, retroactive to temporary suspension, imposed on attorney who pleaded guilty to one count of obstruction of justice; he was sentenced to one year of probation and ordered to pay a $5,000 fine; the attorney had engaged, unwittingly, in insider trading, based on information given to him by a friend; when questioned by an attorney with the United States Security and Exchange Commission (SEC), the attorney denied knowing the friend; upon receipt of a subpoena requiring his testimony, the attorney agreed with his friend to testify falsely before the SEC and did so; when the attorney learned that he was the target of a criminal investigation, he admitted that he had testified falsely to protect his friend and agreed to cooperate in the investigation; the attorney "rendered substantial assistance to the Government that contributed significantly to the convictions of [his friend

and others] and helped the Government to avoid trials that seemed likely before his cooperation;" although we noted that, given the "gravity" of the attorney's misconduct, a three-year suspension was warranted, we imposed lesser discipline due to the "extensive mitigation," including his good character and the fact that he had lied to the SEC for the purpose of protecting his friend); In re DeMiro, 182 N.J. 248 (2005) (eighteen-month, retroactive suspension imposed on attorney who pleaded guilty to a one-count information charging him with conspiracy to obstruct justice; he was sentenced to two months' house arrest, followed by three years of probation, and ordered to provide 300 hours of community services; at the behest of then-Essex County Executive James W. Treffinger, who was later disbarred for his role in the conspiracy, the attorney met with the county engineer and instructed him to create false and misleading documents in order to stymie a federal investigation; in fashioning the discipline, we found that, although the attorney's "dishonest and illegal actions were aimed at the people of Essex County" and, thus, could not be excused, he had cooperated with the government and had an unblemished disciplinary history); In re Marotta, 167 N.J. 595 (2001) (two-year, retroactive suspension imposed on attorney who pleaded guilty to one count of obstruction of justice; he was sentenced to house arrest for six months,

followed by three years' probation, and ordered to perform 100 hours of community service and to pay a $3,000 fine; the attorney assisted two individuals in an improper real estate transaction; when a grand jury issued a subpoena seeking documents pertaining to the transaction, the attorney instructed the individuals to destroy the documents; in mitigation, we considered that the attorney was seventy-one years old and the primary caregiver of his wife, who was very ill; he did not benefit from his wrongdoing; he had been very active in civic and pro bono activities and submitted to the sentencing judge thirty-six letters attesting to his good character and his contributions to the community; he became involved in the fraudulent real estate transaction after its inception, his involvement was limited to about one month, and his conduct was aberrational); In re Power, 114 N.J. 540 (1989) (three-year suspension imposed on attorney who pleaded guilty to obstructing the administration of law, contrary to N.J.S.A. 2C:29-1, a disorderly persons offense; he was ordered to pay a $1,000 fine and a $25 penalty to the Violent Crimes Compensation Board; the attorney admitted that he had purposely advised a client not to disclose any information to law enforcement authorities concerning a stock fraud investigation, advocated a cover-up, not for the client's protection, but because of his fear that he

was also a target in the investigation, aided his client in filing a false claim with an insurance company, despite harboring a reasonable suspicion that the claim was fraudulent, and forwarded false information to an insurance company regarding the inflated value of a dead racehorse, in spite of access to extrinsic evidence reflecting a substantially lesser value); In re Treffinger, 181 N.J. 390 (2004) (disbarment imposed on attorney who pleaded guilty to conspiracy to obstruct justice and mail fraud; he was sentenced to thirteen months in prison, followed by three years of supervised release, fined $5,000 and ordered to pay a $200 special assessment and $29,471 in restitution; the attorney, in his capacity as a county executive, coached his aids to lie to federal investigators and to create a sham paper trail to conceal improper campaign contributions, and placed campaign workers on the county payroll, without disclosing his actions to election officials; we found his actions to be "the worst type of self-serving dealings, where he corrupted, and brought down friends or colleagues, in an attempt to cover up his past misconduct and to further his political aspirations," rendering him "a crook of the worst order"); In re Carbone, 178 N.J. 322 (2004) (disbarment for attorney who was convicted of conspiracy to obstruct justice and commit perjury, subornation of perjury,

obstruction of justice, and perjury; he was sentenced to 120 months' imprisonment; after the attorney was retained to represent his client, who had been indicted on federal drug charges, he fabricated a defense for his client, coached a witness to testify falsely at his client's trial, and elicited that false testimony from the witness at the trial; after his client had admitted to a probation officer that the witness's testimony was untrue, the attorney offered her a bribe to recant her admission and to testify falsely to the district court, which she did; we recommended disbarment because the attorney's conduct was similar to that of the attorney in In re Edson, 108 N.J. 464 (1987), who had advised two clients to manufacture evidence, permitted a client to offer false evidence in a trial, assisted a witness to testify falsely in a trial, participated in a fraud by giving false information to his expert witness for the purpose of having him testify upon the facts, and gave false information to a prosecutor); In re Maquire, 176 N.J. 125 (2002) (on motion for reciprocal discipline, attorney disbarred as a result of his criminal conviction in the United States District Court for the Southern District of New York for the crimes of conspiracy to defraud the United States, obstruction of justice, and tax fraud; he was sentenced to a two-year term of probation and ordered to perform one hundred hours of community service

and pay a $3,000 fine; in his plea allocution, the attorney admitted having conspired with others to form an "alter ego" corporation to procure federal contracts after a prior company had been barred from doing so; the attorney also admitted preparing and submitting false documents to conceal the relationship between the two companies, that he failed to produce documents required by a subpoena, and that he failed to report income; the attorney did not appear on the return date of the Court's Order to Show Cause why he should not be disbarred or otherwise disciplined; in recommending the attorney's disbarment, we noted that "[t]he common thread that runs through cases resulting in disbarment is that the conduct is so offensive and obnoxious both to common decency and to principles of justice that there can be no other result," In the Matter of John R. Maquire, DRB 02-104 (August 23, 2002)); and In re Conway, 107 N.J. 168, 180 (1987) (disbarment for attorney convicted of state conspiracy and tampering with a witness; he was given a suspended four-year state prison sentence without probation and fined $2,500; the attorney had participated in a scheme in which a police officer falsified a police report and gave false identification testimony; in disbarring the attorney, the Court held that "[c]ertain types of ethical violations are, by their very nature, so patently offensive to the elementary

standards of a lawyer's professional duty that they *per se* warrant disbarment" and that "[e]thics offenses of this caliber stigmatize a lawyer as unfit to practice").

In our view, anything less than a three-year suspension would not be appropriate in this case. Unlike Verdiramo, who received a time-served suspension, there has not been a significant passage of time since the commission of respondent's crime (2012-13), conviction (2016), and sentencing (2017). Further, unlike the attorney in DeSantis (one year), respondent neither was an unwitting participant in the crime nor committed the crimes in order to protect a friend, to the extent that is deemed relevant.

In addition, unlike the attorneys in DeSantis and DeMiro (eighteen months), the record contains no evidence that respondent cooperated with the government in its investigation of others involved in the conspiracy. Finally, the compelling mitigation in Marotta (two years) does not exist in respondent's case.

The question, thus, becomes whether respondent should receive a three-year suspension or suffer the ultimate sanction, that is, disbarment. Unfortunately, the record offers limited facts underlying respondent's criminal conduct.

In Power, the only three-year suspension case, the attorney was convicted of obstructing the administration of law, under a New Jersey statute, which classified the crime as a disorderly persons offense. Conspiracy to obstruct justice, under federal law, is a felony. Further, Power was ordered to pay only a $1,000 fine for his misdeed, whereas respondent was imprisoned and fined five times that amount.

If the distinction between a three-year suspension and disbarment turns on the length of the sentence imposed, then a suspension would be appropriate in this case. An examination of the facts in the disbarment cases, however, suggests that disbarment should not be dependent on the length of the sentences meted out but rather on the seriousness of the facts underlying the crimes. For example, even though the attorney in Treffinger received a prison sentence of only thirteen months, his conduct was so corrupt as to render him "a crook of the worst order." This most certainly cannot be said of respondent.

The other disbarment cases also are distinguishable. In Conway, for example, the attorney did not just tamper with a witness. He tampered with a police officer — an integral participant in the administration of justice — rendering the attorney's tampering a "double obstruction" of justice.

In Maquire, the attorney's conduct was considered "so offensive and obnoxious both to common decency and to principles of justice that there [could] be no other result." In that case, the attorney's employer was barred from direct federal procurement contracts after its vice-president was convicted of giving a gratuity to a United States Environmental Protection Agency inspector on one of the contracts. In the Matter of John R. Maquire, DRB 02-104 (August 23, 2002) (slip op. at 2). The attorney played an integral role in setting up an alter ego company for the purpose of pretense in order to fraudulently obtain federal contracts and earn millions of dollars without disclosing the alter ego's connection to the employer. Ibid. In addition, the attorney failed to report personal income on his 1991 income tax return. Id. at 3.

In Carbone, the attorney's conduct was so pervasive that he fabricated his client's defense and suborned perjury of his client. He also coached a witness to testify falsely at trial and then elicited that false testimony at the trial. When the attorney's client subsequently admitted to a probation officer that the witness's testimony was false, the attorney bribed her into recanting that statement and testifying untruthfully to the district court.

In our view, respondent's conduct was not as egregious as that of the disbarred attorneys. Unlike Conway, respondent did not tamper with a member of the law enforcement community. Unlike Maguire, respondent did not orchestrate the Lacerdas' and Resnick's scheme, and he did not commit personal acts of fraud. Although respondent coached witnesses, he did not elicit false testimony from them while under oath. He also did not offer a bribe to someone. Finally, despite respondent's misconduct, one could hardly classify him as "a crook of the worst kind." In short, disbarment would be inappropriate in this case, leaving us to determine the length of suspension to impose on respondent.

That said, respondent's conduct is more serious than that of the attorney in DeSantis (one-year suspension) whose participation in inside trading was unwitting. Although he subsequently testified falsely about the matter, he did so to protect a friend. He also "contributed significantly" to the convictions of others. The attorney in DeMiro (eighteen-month suspension) also cooperated with the government in the prosecution of Treffinger.

In Marotta (two-year suspension), the attorney benefitted from substantial mitigation, including his age, his role as primary caretaker for his very ill wife, his limited involvement

in the fraud, and the aberrational nature of his offense. We note also that, like respondent, Marotta did not benefit from his wrongdoing and that he had been very active in civic and pro bono matters.

Although some of the mitigating factors in Marotta are present here, respondent does not stand in the same shoes as the attorney in that case. At the time of respondent's misconduct, he had been a member of the bar for only six years. In addition, his involvement in the scheme was much more extensive than Marotta's.

The facts of this case are most similar to those in the Power case, where the attorney received a three-year suspension. Like respondent, Power assisted his client in withholding information from authorities investigating criminal conduct. Power and respondent both assisted their clients in making representations that they knew to be false. Yet, respondent assisted his client in making those misrepresentations to federal authorities versus Power's client's misrepresentations to an insurance company.

Further, respondent was an active participant in the obstruction of justice in a way that Power was not. To be sure, Power aided his client in filing a false claim and forwarded the false information to the insurance company. Respondent, however,

participated in the obstruction of justice, by trying to influence all four of the victims and, in addition, signed a certification in which he averred that he had not consulted the defendants in respect of the subpoena, and produced a CD containing an alteration of material evidence.

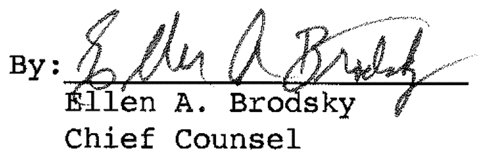
Judge Hillman's observation that he had not seen "a more vigorous effort at obstruction" in his twenty-five year career as a prosecutor and judge, in addition to his imposition of the prison term (albeit for less than the recommended guidelines amount), suggest that respondent's conduct was more pernicious than the facts elicited at the plea hearing imply. Yet, there simply is not enough in the record to place respondent's conduct in the same category as the attorneys who have been disbarred.

Therefore, for respondent's violation of RPC 8.4(b) and RPC 8.4(c), we determine to impose a three-year suspension, retroactive to the date of his temporary suspension, April 7, 2017. We further determine that, prior to reinstatement, respondent must submit proof of fitness to practice, as attested to by a qualified mental health professional approved by the OAE.

Member Zmirich voted to recommend disbarment. 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

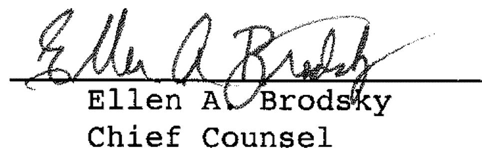
In the Matter of Joshua Lawrence Gayl
Docket No. DRB 17-418

Argued: February 15, 2018

Decided: June 8, 2018

Disposition: Three-year Retroactive Suspension

Members	Three-year Retroactive Suspension	Disbar	Did not participate
Frost	X		
Baugh			X
Boyer	X		
Clark	X		
Gallipoli			X
Hoberman	X		
Rivera	X		
Singer	X		
Zmirich		X	
Total:	6	1	2



Ellen A. Brodsky
Chief Counsel