Supreme Court Of New Jersey
Disciplinary Review Board
Docket Nos. DRB 18-187 and 18-188
District Docket Nos. XIV-2014-0651E and
XIV-2014-0653E

In The Matters of	:
Gregory Karl Mueller and Vincent Chirico	:
Attorneys At Law	:

Decision

Argued: September 20, 2018

Decided: December 6, 2018

Eugene A. Racz appeared on behalf of the Office of Attorney Ethics.

Carl D. Poplar appeared on behalf of respondent Mueller.
Joseph P. LaSala appeared on behalf of respondent Chirico.

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

These matters arise from the same set of facts and were consolidated for hearing before a District IIA Ethics Committee (DEC) hearing panel. The matters were referred to the Office of Attorney Ethics (OAE) by the Honorable Craig L. Wellerson, P.J.Cv., Ocean County, and stem from respondents' conduct in connection with the case In the Matter of Patriot Settlement

Resources and Richard Heckel, OCN-L-1925-14 (Patriot matter). The respondents' offices represented opposing parties in the matter.

Respondent Mueller was charged with having violated RPC 1.7(a)(1) and (2) (concurrent conflict of interest) and RPC 5.1(a), (b), and (c) (failure to supervise another lawyer). Respondent Chirico was charged with having violated RPC 1.7(a)(2) (concurrent conflict of interest), RPC 1.15(d) (recordkeeping – failure to maintain New Jersey trust and business accounts), RPC 3.3(a)(1) and (5) (false statement of material fact or law to a tribunal and failure to disclose to the tribunal material facts, knowing the omission is reasonably certain to mislead the tribunal), RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation), and RPC 8.4(d) (conduct prejudicial to the administration of justice).

The hearing panel recommended a reprimand for respondent Mueller and a three-month suspension for respondent Chirico. For the reasons expressed below, we agree with the DEC's recommendations.

Respondent Mueller was admitted to the New Jersey and New York bars in 1993. He maintains a law office in Tenafly, New Jersey. He has no history of discipline in New Jersey.

Respondent Chirico was admitted to the New Jersey bar in 1993 and the New York bar in 1994. At the relevant time, he maintained law offices in

Brooklyn, New York and Tenafly, New Jersey. He, too, has no history of discipline in New Jersey.

Judge Wellerson, who presided over the Patriot matter, denied Patriot's application seeking approval of the sale and transfer of structured settlement proceeds under the Structured Settlement Protection Act, N.J.S.A. 2A:16-63 to 69. This act was adopted to

> protect recipients of long-term structured settlements from aggressive marketing by factoring companies seeking to persuade these people to cash out future payments at sharp discounts.
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> . . . .
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> Structured settlements provide strong public policy benefits. They provide long-term financial protection for injury victims and their families. They provide against the loss or dissipation of lump sum recoveries. Factoring companies . . . using high-pressure sales to "buy" these settlements for a small lump-sum payment, undermine these benefits and may exploit an injured person at a time when they need cash.
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> [Sponsers' Statement to A-2146.]

Judge Wellerson referred the matter to the OAE for investigation. The proposed sale to Patriot was for a lump sum payment of $300,000 to Richard Heckel, despite calculations that the present day value, as of September 19,

2014, was $1,744,501.17.[1] According to the judge's letter, Heckel, the seller of the structured settlement payment rights, was a resident of Atlantic County, and had previously appeared in the Superior Court of New Jersey, Atlantic County, seeking similar relief. Heckel had been injured at birth due to medical malpractice and apparently suffered from cerebral palsy. He was awarded a settlement/annuity for his injuries and was seeking to sell a portion of it. Heckel had sold portions of the settlement prior to this attempted sale.

According to Judge Wellerson, the Patriot application was filed as "a show-cause order," which is typical for such an application. Although the parties requested to have the application approved on the papers, the judge determined to hold a hearing because, he explained, it was his obligation to determine whether the seller of the annuity understood the transaction.

Judge Wellerson, who presided over approximately fifty such hearings, remarked that, typically, the sellers are pro se. The judge added that case law requires the court, when conducting its analysis of the propriety of a sale, to ensure that the sellers of the payments fully understand the repercussions of their actions. He cited several cases setting forth the standard of review,

[1] Both complaints, at paragraph 22d, listed the aggregate amount of the structured settlement payments to be transferred as $2,492,786.88. Both respondents admitted the allegations of paragraph 22.

including In re Transfer of Structured Settlement Rights by Joseph W. Spinelli, 353 N.J. Super. 459 (2002) and In re Keena, 442 N.J. Super. 393 (2015).

Upon reviewing the parties' submissions, the judge was concerned by the size of the sale. After an initial hearing, he became concerned about the fact that Patriot's and Heckel's attorneys shared the same address.

Chirico, Mueller's associate, and Heckel were present at the September 19, 2014 Patriot hearing. Judge Wellerson testified that, at the hearing before him, Heckel was in a wheelchair, and had difficulty speaking, enunciating his words, and raising his hand to be sworn in as a witness. The judge, thus, was concerned about Heckel's ability to "navigate this complex sale of life-contingent payments." At the time of the proposed sale, Heckel was receiving $1,000 per month; was entitled to receive $3,000 per month, as of the date of the DEC hearing; and, in the early 2020s, would be entitled to receive $10,000 per month. Because of Heckel's difficulties, the judge wanted to ensure that he was capable of communicating with his attorneys, and that he have a frank and complete discussion about the impact that the sale would have on his life. The judge emphasized a court's responsibility to ensure that such a sale is in the payee's best interests, and that a discounted future payment would "augment the payee's life circumstances in a manner that waiting for the money could never do."

Judge Wellerson was concerned about Heckel's ability to lead a more comfortable or better life than he would otherwise, once the money from the annuity was dissipated. Heckel's submission to the court included his attorney's certification, which indicated that Heckel would use the sale of the settlement funds to pay off an existing mortgage and, thus, stave off a foreclosure on the property; finance the down payment on a home in Florida; and use the balance for improvements to the home and to pay off credit card debts and loans. At the hearing, the judge did not know whether Heckel would have sufficient funds to accomplish his goals as set forth in his attorney's certification, and Heckel's attorney did not know the exact amount of the mortgage payoff. Although the application had been filed in Ocean County, Judge Wellerson learned that Heckel's house was located in Atlantic County. A certification in the parties' petition stated that Heckel lived at an address in Brick; however, that property was owned by someone other than Heckel. The judge noted that proceedings for the sale of settlements must be filed in the county where the seller resides.

The judge inquired how Heckel came to be represented by the Mueller Law Group (MLG), which was located in Bergen County. Heckel replied, "through the phonebook." When the judge asked Chirico whether he had referred the matter to MLG, Chirico denied having done so, and at no time

corrected his statement. The judge asked him, "[j]ust a coincidence that the two of you [Chirico and Mueller] have worked on all of these dealings together and Mr. Heckel calls Mr. Mueller and then somehow we get to you? That's just out of the blue?" Chirico replied, "[t]hat's my understanding, Your Honor." The judge had difficulty accepting the veracity of Chirico's denial, given that a certification in the matter averred that Heckel was living in Ocean County, but he purportedly used a Bergen County phonebook to find MLG's number.

At the DEC hearing, "in hindsight," Chirico admitted that, his denial that he had referred the matter to MLG was not true.

During an OAE interview, Chirico indicated that he had had an "off-the-record discussion" with the judge in which he corrected his statement about the referral to Mueller. He maintained that, at the time he conveyed that to the OAE, he believed it to be true. At the DEC hearing, when asked "as you sit here today, is . . . that [a] true and accurate statement?" Chirico replied, "As I sit here today I don't recall." During that OAE interview, Chirico stated that he was "taken aback" by Heckel's response about the phone book "and thought that there may have been some other means that he communicated that he found the Mueller Law Group."

When the presenter asked Judge Wellerson whether Chirico had ever corrected the record about not referring the matter to MLG, the judge replied:

> my response now, as it was at the time, was had that disclosure been made, I would not have gone to the internet to learn more about this address location and the relationship between the attorneys. And I recall being shocked when I saw that he was listed "of counsel." And then I understand that it was brought out that when you look at Mr. Chirico's letterhead, it does have Mr. Mueller as one of the attorneys underneath. But in all candor in reviewing the file on the sale of the structured settlement, I didn't review it to that extent. And the attorney who appeared before me had a different last name and I didn't put those pieces together.
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> [2T66-18 to 67-6.][2]

Judge Wellerson called the parties into chambers to give them an opportunity to withdraw the application, asking whether the agreement was in Heckel's best interests. The attorneys, nevertheless, wanted to proceed. The judge's reasons for denying the application were (1) Heckel was to receive $300,000, while the mortgage payoff amount at the time of the hearing was $205,000; (2) Heckel intended to finance the down payment for a house in Florida costing between $200,000 and $250,000; (3) improvements to a new house would cost between $65,000 and $70,000; and (4) Heckel would be left with $20,000 to $30,000 to pay off a credit card debt. The judge concluded that Heckel would be left penniless.

[2] 2T refers to the October 20, 2017 DEC hearing.

In Judge Wellerson's view, Heckel's attorney had not discussed with Heckel the problems with the sale - that "[t]he numbers didn't work." At the time of the Patriot hearing, the judge was "satisfied . . . that there was no credible information to make a decision on something so monumentally important to this man to just leave it to happenstance." The judge's obligation was to consider the risk to Heckel, not to Patriot. He was well-satisfied that the agreement was not in Heckel's best interests.

After the hearing, the judge researched the law firms representing the parties and discovered that Chirico was listed as of counsel to Mueller's law firm. Through a website advertisement, the judge found that the law firm representing Patriot was the same firm representing Heckel. Judge Wellerson then issued an order to show cause for the attorneys to appear to explain their circumstances. The attorneys each appeared with separate counsel, who questioned Judge Wellerson's jurisdiction to proceed with the show-cause hearing. The judge had hoped that there was some explanation, such as there was a mistake. However, the attorneys had no explanation for what occurred. The judge then referred the matter to the OAE.

The respondents' relationships to each other are somewhat confusing. According to Mueller, he has known Chirico since the mid-2000s, when Mueller was of counsel to the firm Silverman, Sclar, Shin and Byrne

(Silverman Sclar) and Chirico became a partner at that firm several years later. In 2012, Chirico left the firm to start his own solo practice, Chirico Law PLLC, in Brooklyn.

When the Silverman Sclar firm dissolved, Silverman and Sclar each started their own firms. Mueller became of counsel to both firms. Chirico was also of counsel to the Sclar firm. Mueller, too, was of counsel to Chirico's firm prior to the transaction at issue.

Mueller is the sole shareholder of MLG in Tenafly, New Jersey, which at the time of the DEC hearing had seven employees, two of whom were full-time associates. In 2012 or 2013, Mueller and Chirico became of counsel to each other's firms, and Mueller was listed on Chirico's letterhead as such. According to Mueller, he had forgotten that his name was on Chirico's letterhead. He maintained that their "of counsel" relationship was never formalized. Mueller permitted Chirico to use his law firm's office address in Tenafly, but did not recall when he had done so. Chirico's picture and biography appeared on the MLG website as of counsel to the firm. Mueller maintained that Chirico's name was not added to the website until after the papers had been filed in the Patriot matter. He admitted that permitting Chirico to use his office address implied a relationship between them. Mueller claimed

that Chirico's name was removed from the website following the OAE's interview in this matter.

Chirico asserted that he and Mueller have an "affiliation" to date. Chirico used Mueller's Tenafly, New Jersey address and had added Mueller and Mueller's law partner to his errors and omissions insurance policy, as of counsel, in September 2012. Mueller, too, added Chirico to his malpractice insurance, as "of counsel," after he accepted Heckel as a client.

Chirico represented Patriot in the transaction. At the hearing before us, Chirico's counsel noted that Chirico was Patriot's "long-time representative" and had represented Patriot in approximately twenty such cases. According to Chirico, Patriot insisted that Heckel have representation in the application to the court, as Patriot was concerned that, because of Heckel's disability, "it would provide for bad optics in . . . a courtroom and, therefore, it would be best to have someone there independently to - - indicate that there was some support for his position." Chirico's counsel maintained that Chirico recommended MLG to Patriot. In turn, Patriot recommended MLG to Heckel. Chirico asserted that MLG was more than qualified to handle the representation, despite the attorneys' association.

Chirico denied any involvement in negotiating the transaction, asserting that Patriot and Heckel had done so.[3] Chirico explained that life contingent purchases bear higher risks than non-life contingent purchases. In a "non-life-contingent" transaction, the payments under the annuity are guaranteed and are sold for a lump sum. Payments under a "life-contingent" deal are not guaranteed. There is an inherently higher risk in purchasing those payments, which may not be available after the transaction is finalized. The purchaser in a life-contingent transaction may bear an additional cost of purchasing life insurance to hedge the risk and guarantee future payments. The cost of life insurance can be "astronomical." Chirico reviewed and agreed with Patriot's expert's report, which concluded that the discounted rate to which Heckel agreed, 16.38%, was fair and reasonable.

As to the court action, Chirico's name appeared on the complaint, listing MLG's address as his own. According to Mueller, he had not noticed that Chirico had used his address on the pleadings. Chirico claimed that he did not attempt to hide his affiliation with Mueller. At the time Chirico referred the matter to MLG, he did not realize that a conflict existed, but as of the date of

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[3] Neither Heckel nor anyone from Patriot testified to corroborate or dispute this testimony that the negotiations had taken place without either of the respondents' involvement.

the DEC hearing, recognized that there was "an appearance of a potential conflict."

Contrary to Chirico's statement to Judge Wellerson, Mueller testified that it was Chirico who referred Heckel to MLG during the summer of 2014. MLG was retained to ensure that Heckel's sale to Patriot was handled correctly and lawfully, and that Heckel understood the terms of the transaction.

Mueller likened the court proceeding to a "friendly hearing" wherein a judge ensures that the proposed structured settlement is fair and reasonable. Here, too, the deal that had been struck required court approval.

The proposed September 11, 2014 fee agreement between Heckel and MLG was for a flat $750 fee and provided that MLG would protect Heckel's legal rights and "do all necessary legal work" to properly represent him. It added that Heckel was seeking to sell the "remaining portion" of his structured settlement to Patriot in exchange for a lump-sum payment of $300,000. The agreement excluded representation on the defense of, or filing of an appeal, but included services for the firm's attempt to adjourn the foreclosure sale of Heckel's home. Mueller noted that Heckel did not pay MLG for any of the services it rendered.

Mueller assigned the matter to XX, an associate,[4] whom he had known for years, as he had coached him in soccer during his youth and knew XX's father, who was also a lawyer. XX had roughly two years of legal experience at the time, but not in these types of cases. Mueller, therefore, claimed that XX worked under his supervision. Although Mueller, too, had never "directly put through" this type of settlement, he was aware of Chirico's experience in these transactions.[5]

According to Mueller, he supervised XX by relaying the facts of the matter, the "procedural posture," and the client's expectations. He established XX's responsibilities in his day-to-day handling of the file and reviewed documents. Mueller understood that Heckel needed funds from the sale of the annuity to forestall a pending sheriff's sale of his property. Mueller reviewed XX's research, and testified that "it was a collaborative effort." XX conducted research on Westlaw and various internet sites to determine whether the "deal" was within industry standards and fair to Heckel, and then reported his findings to Mueller. Mueller did not, however, participate in telephone calls between XX and Heckel, request copies of e-mails or other correspondence,

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[4] The testimony of Mueller's then associate was sealed, pursuant to a protective order. Therefore, we refer to the associate as "XX."

[5] Chirico previously had handled approximately twenty such cases.

discuss obtaining a conflicts waiver with XX, or discuss with XX his own relationship with Chirico.

Mueller maintained that he had forgotten that he was listed as "of counsel" on Chirico's letterhead, which Chirico used to file the documents in the Patriot matter, and that Chirico's stationery listed Mueller's address as one of Chirico's addresses. Mueller claimed that, initially, he did not realize that there was a conflict, that he needed to review the ethics Rules, or that a waiver was needed. He did not conduct a conflicts analysis until after the hearing before Judge Wellerson. He stated that, when he analyzed the situation,

> [t]he conclusions that I came to was [sic] that there was an apparent conflict of interest which if I had known of at an earlier time, I would have carefully reviewed the ethics rules and either gotten a waiver from the client or withdrawn as counsel and had a new attorney substitute in.
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> [1T132-7 to 132-12.][6]

In preparation for the hearing before Judge Wellerson, Chirico sent draft copies of documents to MLG, including a certification for XX's signature. Mueller was not concerned about getting the documents from opposing counsel because the documents were not being "rubber stamped;" rather, they were reviewed, evaluated, and adjusted as necessary. He stated, "[t]here's not

[6] 1T refers to the October 19, 2017 DEC hearing.

much sense in reinventing the wheel." Similarly, Mueller was not concerned about XX's communications with Chirico about the case, because XX "was working hard at this file. He was researching. He was coming in to talk to me about it frequently." XX was eager to do a good job. Because of Heckel's disabilities, XX "paid a little extra attention" to ensure that Heckel was "okay."

As to the proposed amount of the sale of the annuity, XX e-mailed Mueller, inquiring whether $300,000 was standard, when his calculations showed a present value of $691,761. Mueller replied "No. What does Vince say?" Mueller did not view the seeking of advice from Chirico, opposing counsel, as a problem, because he did not consider them as being in a "particularly adversarial position." Moreover, MLG would research the matter further. Mueller did not believe that it was within the scope of their representation to shop around for a better deal for Heckel, as Heckel had already done so and was in a better position than MLG to know what the market would bear. MLG was retained simply to determine whether the Patriot deal was fair and reasonable for Heckel, and to finalize the documents for submission to the court. Mueller admitted, however, that he never had any direct conversations with Heckel.

Chirico did not find it "odd" that XX questioned him about the amounts listed in the certification. He did not characterize Patriot's and Heckel's

positions as adversarial, but acknowledged that they had their "own interests which, in some ways, may have been adverse."

Chirico acknowledged sending to XX both a draft certification[7] and a "cheat sheet" (questions to ask the client during the court proceeding). The cheat sheet was to help XX get a sense of the types of questions to ask, to address the court's concerns under the Structured Settlement Protection Act. Chirico admitted, however, that the forms he sent to XX already had incorporated information specific to Heckel. Mueller did not view this as a problem, as long as XX independently analyzed and evaluated the documents and determined that it was in Heckel's best interests.

On the day of the hearing, a couple of "off-the-record" discussions took place, which apparently became heated. On the record, Judge Wellerson cautioned Heckel "to be careful in selling his money" and inquired whether he had a family member or anyone else to protect his interests. Heckel replied that he did not.

The judge admitted that Heckel did not have an opportunity to testify about whether he had conducted his own independent research into the

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[7] Notwithstanding Chirico's testimony that the certification was simply a form, the hearing panel chair noted that only a few blanks on the document needed to be completed.

available rates. The judge did not find it germane because, even if he had obtained the best rate available, it was of little consequence if the transaction left him penniless – in a far worse position than prior to the sale. The judge opined that Heckel suffered a "horrible" injustice. It was "readily apparent to any right-thinking person that to deprive this man of his only source of income was just . . . inhumane." In the judge's view, the respondents' excuses for their actions were specious and only "inflamed the situation."[8]

Judge Wellerson conceded a lack of meaningful exchange with Heckel, stating, "I can assure you that it was out of compassion that I did not exchange a long dialogue with Mr. Heckel. It was difficult for him to speak. It . . . was arduous for him to go through these steps."

Although the judge did not reach the merits of the application, the basis for his referral to the OAE was Chirico's lack of candor and the relationship between counsel, not the merits of the sale. Chirico's counsel, nevertheless, tried to cloud the record with the issue of whether the judge had given ample opportunity to Chirico and XX to establish the merits of the transaction. As the

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[8] At the hearing before us, respondent's counsel argued that Heckel had additional income from employment with his father's company. However, XX testified before the DEC that he recalled that Heckel "had worked with his dad .... [but] didn't know the very specific details about [Heckel's] past employment."

DEC Chair pointed out, that issue was not "remotely relevant" to the ethics charges. He, thus, tried to limit the testimony to the ethics charges.

The DEC Chair permitted Mueller's attorney to present testimony from respondents' expert, Andrew S. Hillman, an attorney and consultant to the financial services industry. Hillman testified about the methodology used to determine the present day amount "originators" like Patriot pay to sellers, based on a discounted rate of future annuity installments. According to Hillman, the court proceedings to approve such sales are not adversarial, they are collaborative – "a seller of payments and a buyer of payments enter into a business transaction;" the matter is submitted to the court by way of a petition, not a complaint; there is no discovery; and there are no adverse parties. He testified, "what it is is a court hearing; a judge hears the matter and after considering all of the circumstances, must find that it is in the best interests of the seller of the payments."

Hillman denied that the buyers' and sellers' interests are adverse, asserting that, because they enter into a contract, there is a "meeting of the minds." He conceded, however, that Patriot entered into the transaction to make a profit, and that Patriot's interest in the transaction was to "get the most money from Mr. Heckel and pay off the least money to him." He added that

Heckel also benefitted by bargaining for as much money as he could get from Patriot.

In Hillman's opinion, after reading the transcript of the proceedings, the judge did little to determine whether the transaction would be in Heckel's best interests. Although Hillman did not know how much money Heckel would have had to live on after the sale, he maintained that Heckel was not selling all of the remaining payments under his annuity. Hillman conceded that the pleadings failed to show whether Heckel would have money left or the value of any remainder of the annuity, after the proposed sale. Hillman admitted that it was an oversight on his part to omit from his report the value of any remaining portion of the annuity.[9]

Hillman explained that most state statutes require that the buyer of payments inform the seller that they are entitled to "independent financial professional advice" (IPA). Hillman's expert report indicated that Heckel retained MLG as his IPA. Hillman's view of "independent" in the acronym IPA was "no professional affiliation, representation, et cetera, with the actual . . . buyer entity." The "independent" means no business or legal conflict. According to Hillman "if somebody from the Mueller firm is doing an IPA . . .

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[9] The proposed retainer agreement stated, however, that Heckel was "seeking to sell the remaining portion" of his structured settlement to Patriot.

since that firm did not represent Patriot ever, the standard of 'independent' would be consistent'." He could not opine on the affiliation between counsel for Patriot and counsel for Heckel, however.

Hillman testified that there was a significant risk in the subject transaction, but Patriot had not purchased any insurance to hedge against that risk. Chirico, however, had informed the court that Patriot would purchase a life insurance policy to guarantee the payments.

XX appeared reluctant to testify at the DEC hearing. For the most part, his testimony corroborated that of the respondents. His memory of the events, however, was, at times, inaccurate. The OAE, therefore, refreshed XX's memory with various e-mails in connection with the subject transaction. XX's reluctance to testify may, in part, have been a result of his long association with Mueller. Mueller's son had been XX's classmate and Mueller had been XX's youth soccer coach.

XX, a 2012 graduate from law school, was admitted to the New Jersey bar that same year and to the New York bar in 2013. At the time of the DEC hearing, he was no longer engaged "in the direct practice of law," but was working for a commercial real estate company, in the area of finance. His last legal position was with MLG.

XX had not been involved in the sale of structured settlements prior to his representation of Heckel. Initially, he and Mueller discussed the strategy of the case and the client's wishes. Mueller then turned the matter over to him. Mueller was available to supervise and mentor him. Both Mueller and XX researched the unfamiliar aspects of the case, and Mueller gave him direction on how to proceed.

XX explained that he had difficulty communicating with Heckel because of his verbal limitations from cerebral palsy. Although Heckel was physically weak, "he was a very sharp guy." Their communications were primarily via e-mails and text messages.

XX also maintained that Heckel had negotiated the terms of the sale and had "shopped around" for the best available terms. He claimed that Heckel had experience doing so, as he had previously sold portions of his structured settlement. XX, nevertheless, reviewed the offer to ensure that it was fair, and discussed it with Heckel to make sure he understood the transaction.

In accordance with the Structured Settlement Protection Act, XX executed a certification indicating Heckel's desire to proceed with the sale. Although XX initially claimed that Heckel had drafted the certification, once he was shown several e-mail exchanges between himself and Chirico, he admitted that Chirico had forwarded the certification, which required only that

he fill in several blanks. Contrary to his earlier testimony, XX admitted having had discussions with Chirico, but could not recall their substance. XX also confirmed that, for the hearing before Judge Wellerson, Chirico had sent him a cheat sheet – questions to ask Heckel during the court proceeding.

OAE Exhibit 20 is an August 29, 2014 e-mail from Chirico to XX, copying Mueller, which attached various documents, and stated, "[o]nce you review the documents, give me a call to discuss your proposed affirmation, and if necessary, we will attempt to communicate with Heckel via phone conference." The same exhibit contained another e-mail from Chirico to XX stating,

> in addition to the below, see attached draft certification, which is along the lines of what we'll need from your end, to submit to the Ocean County Superior Court in advance of the September 5, 2014 return date. We can help fill in the blanks and discuss this with Mr. Heckel. Let me know what you think.
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> [OAEEx.20.]

One e-mail to Chirico from XX requested another copy of the certification in Word format, so that XX could make the necessary edits. XX also questioned whether Heckel's prior injury needed to be addressed in the certification.

XX would not concede that Patriot and Heckel were adversaries because, he asserted, Heckel had reached the settlement on his own, before retaining

MLG. XX viewed the sale as a friendly business transaction rather than a dispute. He stated, "I don't think I was seeking assistance from [Chirico]. I think we were working together on a case as he was representing one side and we were representing the other with the shared interest of getting it done. And we worked together nicely." Nevertheless, XX recognized that each side had its own interests. Although reluctant to admit that he had used the certification Chirico had sent him, when pressed, XX admitted that the certification he ultimately signed was identical to the one Chirico had sent, but added that it had been tweaked by both he and Chirico. XX conceded that there was something wrong with his adversary's editing the certification, but justified it as "a friendlier cause of action" in which everyone was on good terms and had a shared goal.

An e-mail, from XX to Mueller stated that, according to XX's calculations, the present value of the settlement was $601,761.06 and that Heckel was selling it for $300,000. XX inquired "[d]oes this seem standard for these types of lump sums [sic] payments?" Mueller replied "No, what does Vince say?" XX claimed that he researched the value on Westlaw and the internet, and by calling "someone in the community, I think a fellow attorney." He became comfortable with the sum. There were many "metrics" to consider in calculating a fair discount rate, including Heckel's life span. He and Mueller

believed it was important to get Chirico's feedback, because they valued his input, but did not rely on it exclusively. It was a "delicate balance between making Heckel happy and making sure he was comfortable with the deal and that "it made a reasonable business sense." He referred to Heckel as an expert in the industry because he had sold annuity payments to other buyers on several occasions.

XX testified that the day of the hearing, "probably [was] one of the most distraught days of my entire life, let alone my professional life." From the beginning, the judge seemed extremely angry and annoyed, not friendly. After counsel put their appearances on the record, he called them back into chambers. He asked the attorneys if they thought the agreement was fair, but did not give them an opportunity to reply, he was upset and "started yelling and screaming." XX claimed he "got lambasted and walked out with [his] head in [his] hands." XX was frustrated that he was never able to put his position on the record. The judge denied the transaction. Heckel told XX that he could not believe that he had "screwed up" the case and that he would find another attorney who could get the transaction approved.

XX was not aware of a conflict between Mueller and Chirico, but knew that they were friends and colleagues and may have worked together.

In respect of the recordkeeping charge, at the time of the transaction, Chirico did not maintain New Jersey-based trust and business accounts. Shortly after the OAE informed Chirico of his obligation to maintain such accounts, he opened them.

As to mitigation, in his own behalf, Chirico described his family, bar activities, stints as an adjunct professor at New York Law School from 2000 to 2011 and as a lecturer at continuing legal education seminars, and his charitable and civic contributions.

Chirico also offered the testimony of three witnesses. Christopher Santomassimo, Esq. testified that he has known Chirico since the late 1990s when they were both involved in mass tort litigations. He knows Chirico has a reputation for being honest, ethical, and competent, characteristics with which he agrees.

Steven Rice, Esq. has known Chirico since 1996. They worked together at two different law firms, until 2004. They maintain a personal and professional relationship. Rice is familiar with Chirico's reputation for honesty, ethical conduct, integrity, and competence. He is also familiar with Chirico's charitable works with underprivileged youth, and with AMICO, an Italian-American organization.

Maureen McCann has known Mueller for twenty-five years. She took care of Mueller's son, as his nanny, and prepared meals for Mueller, who was a single parent. When McCann had to file for bankruptcy, Mueller found and paid for her attorney. She added that, although he is quiet and not boastful, she was aware that he assisted others.

In a letter brief to the DEC, the OAE argued that the concurrent professional relationship between Mueller and Chirico, whose firms collaborated in the adversarial matter, constituted a per se unwaivable conflict of interest in violation of RPC 1.7(a)(2). Chirico also misrepresented to Judge Wellerson that he had not referred Heckel to MLG and, thereafter, did not correct the false statement, violations of RPC 3.3(a)(1) and (5), and RPC 8.4(c). The OAE argued further that Chirico's conduct in this regard violated RPC 8.4(d), as well, because it affected the court proceeding leading to the denial of the application. Finally, Chirico's failure to maintain New Jersey trust and business accounts, as R. 1:21-6 requires, violated RPC 1.15(d).

As to Mueller, the OAE pointed out that he was XX's supervising attorney and was aware of XX's lack of experience in the sale of settlement proceeds. Mueller, too, had limited experience in the area. Both attorneys relied heavily on Chirico's advice, who was their adversary in the matter. According to the OAE, Mueller had a duty under the Rules to ensure that XX

did not engage in conduct amounting to a conflict of interest. XX's representation of Heckel was beyond his expertise, and Mueller failed to give him sufficient support and guidance as his supervising attorney. Moreover, Mueller directed XX to seek advice from Chirico. The advice and consultation "devolved into an impermissible collaboration with a legal adversary."

The OAE contended that Mueller failed to inform XX of his relationship with opposing counsel and could have taken remedial action with regard to the conflict of interest, but failed to do so.

The OAE pointed out that Heckel was a vulnerable client, both physically and financially. His condition required a heightened duty of care on MLG's part. Mueller's failure to provide that care was an aggravating factor.

As to Chirico, the OAE underscored Judge Wellerson's testimony that Chirico neither disclosed to him that he had referred Heckel, nor corrected the record about his false statement. The OAE viewed Chirico's failure to remedy his misstatement as an aggravating factor. According to the OAE, Chirico wanted to finalize the sale, and knew that Mueller would not "shop the transaction to a different structured settlement company."

The OAE urged the DEC to find both respondents guilty of all charges and to impose a reprimand on Mueller and a three-month suspension on Chirico.

Chirico's brief to the DEC urged a finding that, although Patriot and Heckel were "technically 'adverse,'" the negotiation was an "arms-length, friendly business transaction" in which there were no adverse interests or acrimony. It was a "friendlier cause of action" and the parties' mutual goal was to obtain approval of the agreed-upon transaction. The parties' common goal was to achieve the sale.

Counsel argued that there was no evidence that Chirico's ability to achieve Patriot's goal – court-approval of the sale – was limited because of his prior relationship with MLG. The deal benefitted both parties. Moreover, Chirico had suggested to Patriot that Heckel consult with MLG, because he knew it was a competent firm. There was no financial quid pro quo for the referral.[10]

According to counsel, the OAE failed to establish a conflict of interest under RPC 1.7(a)(2). Likewise, the OAE failed to establish that Chirico knowingly misstated or failed to disclose material facts to the court or engaged in conduct giving rise to violations of RPC 8.4(c). Counsel argued that Chirico did not hide his relationship with Mueller from the court, rather, it was "open and obvious," as was the fact that they referred work to each other. Counsel

[10] The record established, however, that neither XX nor Mueller had experience in these types of transactions.

argued that Chirico did not knowingly misrepresent or omit facts concerning the referral. According to counsel, Heckel's statement to the court, that he had obtained MLG's services through the phonebook "utterly confused Chirico." His statement, therefore, was a "mistake." He was "totally flustered" by the court's "inappropriate actions" and by Heckel's statement. Citing to a portion of a transcript, which was not a part of the record, counsel argued that, in his confusion, Chirico thought that Heckel may have found Mueller on his own.

Counsel reasoned that, because the judge disputed Chirico's assertion that they had had off-the-record discussions about the referral issue, there was no clear and convincing proof that Chirico intentionally or knowingly made misstatements, omitted key facts, or engaged in deceitful conduct. Thus, there was no basis to find violations of RPC 3.3(a)(1), RPC 3.3(a)(5), RPC 8.4(c), or RPC 8.4(d).

As to the RPC 1.15(d) violation, Chirico admitted that he did not maintain trust and business accounts in New Jersey, and first learned of his obligation to do so during the OAE interview. Chirico, thereafter, took immediate steps to open New Jersey trust and business accounts. Counsel argued that, because no one ever raised issues or complaints about any of Chirico's business or trust accounts, he had complied with RPC 1.15(d).

Counsel contended that, if Chirico is suspended, his solo practice will cease to function, his clients will suffer "indeterminable" damage, as will his family - his wife and two children. Thus, counsel submitted that, if discipline were warranted, an admonition would be appropriate.

In Mueller's brief to the DEC, counsel argued that Mueller "more than adequately" supervised XX, and that XX neither violated the RPCs, nor caused any harm. Therefore, there was no vicarious liability on Mueller's part. XX was not negligent; rather, he put forth an exemplary work effort.

According to counsel, there was no conflict of interest. Mueller and Chirico were not conducting business together, even though they had hoped to do so. Their prior friendship did not preclude effective representation. Mueller's firm's independent judgment was not impaired. The firm's own research and Hillman's unrefuted expert testimony confirmed the fairness and reasonableness of the deal.

Likewise, counsel contended that the OAE failed to meet its burden of proof in respect of the failure to supervise charge. The record showed that Mueller and XX performed exhaustive work and diligently fulfilled their obligations, but were precluded from making a record in the case before Judge Wellerson. Thus, Mueller properly supervised XX, who performed a competent and ethical job.

Counsel asserted that Judge Wellerson "was not a good witness on his own behalf." He seemed angry, a bit excited, unprepared with respect to the relevant law, did not permit counsel to establish a record, and never undertook "the full and proper best interest analyses."

Counsel pointed out that Mueller has an unblemished ethics record, is a hard worker, and has had no malpractice claims filed against him. Counsel thus, urged that the complaint be dismissed in its entirety, or in the alternative, that any violation be considered de minimis and not deserving of discipline.

The DEC found that respondents' testimony with regard to their association, their letterhead, and Mueller's website unequivocally established their relationship. Respondents held themselves out to courts, the Bar, and the public as having a professional relationship. Mueller's testimony that there was no formalized relationship lacked credibility. The DEC also found it "hard to believe" that Mueller failed to notice Chirico's use of Muller's address on the subject pleadings.

The DEC observed Chirico's mannerisms and "method" of answering questions and found that he, too, lacked credibility. He "made a poor witness on his own behalf" about referring Heckel and about his subsequent claim to the OAE that he had corrected the statement. The DEC further found unbelievable Chirico's statement that Patriot was concerned about bad "optics"

if Heckel were not represented by counsel, because Chirico believed that the matter would proceed on the papers. Therefore, "the optics" would never have been a consideration. The DEC was troubled that Chirico acknowledged that Heckel's condition was a concern, yet he referred the matter to Mueller, with whom he had an association.

The DEC found specious the suggestion by counsel for both respondents that Judge Wellerson did not understand the mechanics of the settlement. The DEC observed that the judge was well-prepared, and "clearly had a thorough understanding of the case law" and his role in these types of hearings. Judge Wellerson testified clearly and succinctly, had excellent recall of the matter, and was gravely concerned that, once the annuity was sold and the funds distributed, Heckel would be left destitute.

The DEC questioned further respondents' choice of venue (Ocean County), when Heckel's property was located in Atlantic County.

The DEC did not find Hillerman's testimony persuasive or relevant because, even if the judge had approved the settlement, both respondents would have been in the same position with regard to their ethics obligations. In fact, the DEC found that the facts of the matter were "somewhat obscured" by Hillerman's presentation.

In addition, the DEC panel found that, "clearly and unequivocally," as members of each other's firm, respondents had a relationship. Their clients, although not engaged in traditional litigation, were in adverse positions. Neither attorney disclosed the obvious conflict of interest to his client. Moreover, when XX was questioned about the conflict, he was not aware of it because his supervisor, Mueller, had never informed him about it.

The DEC also rejected, as specious and unpersuasive, respondents' argument that, because there was no current ongoing business, only the hope of future business, no conflict existed. The DEC found that both respondents engaged in a per se, impermissible conflict of interest. The conflict was not subject to waiver because it involved the assertion of a claim by one client against the other client, both of whom were represented by associated lawyers.

As to Mueller's supervision of XX, Mueller's testimony revealed that he was not aware of the steps XX was taking and was not actually supervising him. The DEC found more significant Mueller's failure to inform XX of his and Chirico's professional relationship as of counsel to each other's firms and the existence of a conflict of interest. The DEC viewed this as, "at best a major oversight" and, at worst, a knowing nondisclosure. The DEC, thus, found Mueller guilty of violating RPC 5.1(b).

The DEC determined that, because Heckel suffered no economic harm and no egregious circumstances were present, a reprimand was appropriate discipline for Mueller's violations of RPC 1.7(a)(2) and RPC 5.1(b).

As to Chirico, the DEC found that he, too, engaged in a per se conflict of interest, in violation of RPC 1.7(a)(2). Chirico was guilty also of violating RPC 3.3(a)(1), RPC 3.3(a)(5), and RPC 8.4(c) for falsely denying to Judge Wellerson that he had referred Heckel to Mueller's firm and for failing to correct his statement to the judge. The DEC did not find credible Chirico's explanation, that he was in shock from Heckel's claim that he found Mueller through the phone book. Because Chirico's material misrepresentation to Judge Wellerson directly affected the court proceeding, by causing its end, the DEC found that Chirico's conduct also violated RPC 8.4(d). Finally, the DEC found that Chirico violated RPC 1.15(d) by his failure to maintain attorney trust and business accounts in the State of New Jersey.

For the totality of the circumstances, the DEC agreed with the OAE's recommendation that a three-month suspension was appropriate discipline for Chirico's violations.

Chirico's brief to us, again, tried to obfuscate the ethics component of the matter by focusing on whether Judge Wellerson properly conducted the hearing under the Structured Settlement Protection Act. The judge's conduct,

however, is not under review and, nevertheless, has no bearing on whether respondents engaged in unethical conduct.

Chirico's brief admitted that he had taken steps to form an "of counsel" relationship with Mueller by including Mueller and Mueller's law partner on his errors and omissions policy since 2012; using Mueller's law firm address, and phone and fax numbers on his letterhead; appearing on MLG's malpractice insurance; and identifying Mueller and Mueller's law partner as having an affiliation with him on his letterhead. The documentation Chirico submitted to the court for approval of the sale contained Mueller's contact information.

Chirico denied having engaged in a conflict of interest, however, asserting that the "pre-negotiated," arms-length, friendly business transaction contained no acrimony or adverse interests. The parties' goal was mutual. He worked with XX to edit XX's certification in order to tailor it to the specific facts of the transaction. At the hearing, the judge elicited virtually no information from Heckel about his condition, wishes, and need for funds at that point in time.

As to Chirico's denial, on the record, that he had referred Heckel to MLG, Chirico reiterated that he was "taken aback" when the court asked Heckel how he met XX, and Heckel replied that he had obtained the MLG name through the phone book. According to Chirico, during an OAE

interview, he was confused as to whether Heckel may have found MLG by some means other than Patriot's referral. Chirico denied that he intended to mislead the trial court, but never corrected his misstatement to the judge, "**on the record**." He also maintained that he was confused when Judge Wellerson asked whether Chirico had referred Heckel, because Chirico had never spoken to Heckel and asserted that he had referred him indirectly through Patriot; he had "suggested that Patriot refer Heckel to the Mueller law firm."

Chirico could not recall whether he clarified his statement about the referral while off the record in the judge's chambers. Chirico argued that no clear and convincing evidence established that he intended to make a misrepresentation to the court, and, given that the judge disputed Chirico's contention that he had informed the judge about the referral, the charges relating to the statement were "at best a disputed issue of fact" and, therefore, all of the charges alleging misrepresentation and conduct prejudicial to the administration of justice should be dismissed.

Chirico argued further that there was no proof that a conflict of interest existed between himself and Mueller because there was no evidence that Chirico's ability to achieve Patriot's goal of obtaining court-approval of the sale would be limited by his "prior" relationship with MLG. It was a good deal for both Patriot and Heckel; there were no other interests or responsibilities

that could have limited Chirico's professional judgment in representing Patriot; there was no financial quid pro quo for the referral; Heckel had his own independent counsel in the transaction; and there was no evidence that Chirico stood to gain from the deal, other than the receipt of his fee, whether the sale was approved or denied.

While Patriot's and Heckel's interests may have been adverse "technically," it was a "friendly business transaction in which there was no acrimony or adverse interest."

As to his recordkeeping violations, Chirico first learned that he was required to maintain New Jersey trust and business accounts at the April 2015 OAE interview. Thereafter, he immediately took steps to comply with that requirement.

Chirico asked that we reject the DEC's recommendation for discipline.

Mueller's brief to us properly recognized that the judge's decisions regarding the application for court approval of the sale had no relevance to a determination of whether there was a violation of the RPCs.

According to Mueller's counsel, the proposed sale was not an adversarial proceeding, and there was no evidence that Mueller's representation of Heckel presented any direct adverse risk to Patriot, or that the representation was limited by any asserted responsibility to Patriot or to Mueller's own interests.

Counsel maintained that a failure to supervise a subordinate attorney is found only if the supervising attorney failed to supervise a subordinate, who then committed an ethics violation. A finding of wrongful conduct by the subordinate attorney is "obligatory" to finding a violation of RPC 5.1, and here, XX did not violate any RPC, rather, his services and professionalism were unassailable.

Nowhere was it contended that XX had any knowledge of the conflict of interest issue. Citing In re Fusco, 142 N.J. 636 (1995) and In re Rovner, 164 N.J. 616 (2000), Mueller maintained that it is an associate lawyer's wrongful acts that are the predicate for the supervisory attorney's violation of RPC 5.1(a).

XX's representation of Heckel was "knowledgeable, optimal and ethical." The charged violation of RPC 5.1 should, therefore, be dismissed because Mueller's supervision of XX was thorough and the conduct of XX, his subordinate, was exemplary.

According to Mueller's counsel, the "undisputed facts are that [Chirico] represented Patriot and recommended that [Heckel] contact [Mueller]," and that Heckel had experience with the sale of his prior annuities and negotiated the terms of the present transaction. Although XX spoke with Chirico, he conducted his own research and had substantial communication with his client.

Mueller, XX, and Chirico viewed the proceedings as a friendly, rather than adversarial, matter. Mueller argued that his firm had no attorney-client relationship with Patriot and that Chirico had no attorney-client relationship with Heckel. At most, there may have been an appearance of impropriety, a doctrine that was eliminated with the 2004 amendments to the Rules of Professional Conduct. Counsel argued that Heckel's best interests were served and there was no clear and convincing evidence of a violation of RPC 1.7. The transaction was fair and necessary.

Mueller's counsel argued further that Judge Wellerson's testimony was neither probative nor relevant on the issue of whether violations of RPC 5.1 or RPC 1.7 occurred.

According to counsel, there was no clear and convincing evidence that Mueller committed any ethics violations and, therefore, he should not be disciplined.

Following a de novo review of the record, we are satisfied that the conclusion of the DEC that the respondents were guilty of unethical conduct is fully supported by clear and convincing evidence.

At the outset, much was made about Judge Wellerson's demeanor during the proceedings, and the fact that he precluded the parties from developing a record on the merits of the sale. Those issues, however, are irrelevant to the

ethics charges against respondents, and the testimony in that regard somewhat clouded the record.

Mueller and Chirico were both charged with engaging in conflicts of interest. Mueller was also charged with a failure to supervise, and Chirico was charged with misrepresentations to the court and recordkeeping violations. The complaints did not charge respondents with gross neglect, lack of diligence, or failure to communicate, even though the evidence might have supported those charges. It is also significant to note that the DEC found Mueller's and Chirico's testimony, in some respects, unworthy of belief. Under Dolson v. Anastasia, 55 N.J. 2, 7 (1969) (a court should defer to a tribunal's findings with respect to those intangible aspects of the case not transmitted by the written record), we defer to the DEC's findings in that regard.

Specifically, Mueller was charged with violating RPC 1.7(a)(1) and (2), while Chirico was charged with violating RPC 1.7(a)(2). R. 1.7(a) provides, in pertinent part, that a lawyer shall not represent a client if the representation involves a concurrent conflict of interest.

> A concurrent conflict of interest exists if:
> (1) the representation of one client will be directly adverse to another client; or
> (2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client . . . or by a personal interest of the lawyer.

RPC 1.7(b) provides that, if a conflict exists under RPC 1.7(a), a lawyer may represent a client if: (1) each affected client gives informed written consent to the representation, after full disclosure and "consultation." If the lawyer represents multiple clients in a single matter, "the consultation shall include an explanation of the common representation and the advantages and risks involved. However, the lawyer must reasonably believe that the lawyer "will be able to provide competent diligent representation to each affected client" (RPC 1.7(b)(2)) and "the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal" (RPC 1.7(b)(4)). Although RPC 1.7(b)(4) applies to both respondents, perhaps the more applicable Rule under the present circumstances would have been RPC 1.10(a), which provides: when lawyers are associated in a firm, none of them shall knowingly represent a client when any one of them practicing alone would be prohibited from doing so by RPC 1.7.

The facts in these matters, nevertheless, clearly and convincingly establish that Mueller and Chirico were "associated." They were "of counsel" to each others' firms; Chirico used Mueller's office address on his letterhead; they were on each others' malpractice insurance policies; and Chirico's name appeared on Mueller's website. As the DEC properly pointed out, the attorneys

held themselves out to the courts, the Bar, and the public as having a professional relationship. Moreover, they each reluctantly admitted that they engaged in a conflict of interest, something neither of them claimed they considered during the pendency of the Patriot application. Their denials are somewhat suspect, however, given the fact that XX was assigned to handle the case, prepared the certification, and appeared in court on Heckel's behalf. To underscore this point, Judge Wellerson testified that he did not immediately make the association between counsel until after the parties appeared in court. He became suspicious and discovered that the attorneys shared an address. After conducting further research, he discovered their affiliation, eventually leading to the referral to the OAE.

Mueller's counsel argues that this case is similar to the situation presented in In re Opinion No. 17-2012, 220 N.J. 468 (2014). There, the Court considered whether a volunteer pro bono attorney could represent low-income "no asset" debtors seeking relief under Chapter 7 of the Bankruptcy Code, if the pro bono attorney's firm represented creditors of the debtors in unrelated matters. Id. at 477. The inquiry under consideration involved the Volunteer Lawyers for Justice (VLJ), a legal service organization that created a bankruptcy clinic to assist low-income debtors. Id. at 469.

The Court concluded that the VLJ program did not present a conflict of interest under RPC 1.7. The Court considered that the nature of a Chapter 7 proceeding makes it less likely that a difference of interests between a debtor and a creditor will develop, as the proceeding is not a lawsuit between a debtor and a creditor. The process does not become adversarial unless someone, "in particular" a creditor, files a complaint and objects. If that happens, the volunteer lawyer in the VLJ program withdraws from assisting the debtor, if the lawyer's firm also represents the creditor. Id. at 482.

Moreover, safeguards were built into the VLJ program to minimize the risk of a conflict of interest. At the outset, the program screens directly adverse interests by conducting a conflict check. If a conflict past or present was found, the representation was declined. Id. at 471. If the debtor passed the conflict check, the retainer agreement informed the debtor that the firm would withdraw from the representation if a conflict arose. Ibid. The Court's analysis addressed only "no-asset" Chapter 7 bankruptcy filings, not filings in which there were assets to distribute. Thus, the clinic handled only bankruptcies where there were no non-exempt assets for a debtor to try to shield, or a creditor to receive. Id. at 483. If a creditor were to object to the discharge of a client's debt, VLJ would arrange for another attorney outside of the firm to handle the case.

The Court's analysis focused on RPC 1.7(a)(2), that a conflict exists if there is a "significant risk" that a volunteer lawyer's representation of an indigent client in a Chapter 7 proceeding "will be materially limited by the lawyer's responsibilities" to a creditor that the firm represents in an unrelated matter, or vice versa. In this context, the Court did not find that the practices of VLJ violated this Rule. Id. at 482.

The situation in Opinion No. 17-2012 is nothing like the situation here. Here, the attorneys had an association and represented clients with adverse interests. As the attorneys' joint expert testified, Patriot's interest in the transaction was to "get the most money from Mr. Heckel and pay off the least money to him." By accepting Heckel as a client, and heavily relying on Chirico's advice in the matter, MLG failed to properly protect Heckel's interests. As the judge concluded, if he had approved the sale, after Heckel's anticipated expenditures, he would have been left destitute. The Structured Settlement Protection Act requires "express findings" by a judge or other fact-finder that the transfer is in the best interest of the payee. In the Patriot case, Judge Wellerson concluded that the transfer did not meet this requirement. The moving papers failed to show that Heckel had any other source of funds. Had the judge's ruling been improper, the parties' remedy was to file an appeal.

Both respondents engaged in a conflict of interest, a violation of RPC 1.7(a)(1), by representing clients with adverse interests. As the Court observed in In re Berkowitz, 136 N.J. 134, 145 (1994), "[o]ne of the most basic responsibilities incumbent on a lawyer is the duty of loyalty to his or her clients. From that duty issues the prohibition against representing clients with conflicting interests." (Citations omitted).

Mueller directed XX to confer with Chirico, who provided XX with the pertinent documentation, which required only that XX fill in several blanks. Neither of the respondents revealed the conflict to XX, or to their respective clients, nor did they obtain informed written consent to the conflict from their clients. It is unlikely, however, that the conflict could have been waived.

The Mueller complaint also charged that he failed to adequately supervise XX, who neglected the matter, and that Mueller failed to inform XX of his existing relationship with opposing counsel, thereby violating RPC 5.1(a), (b), and (c).

RPC 5.1(a) requires a firm to ensure that its lawyers conform to the Rules of Professional Conduct. Subsection (b) requires a lawyer with direct supervisory authority over another lawyer, to make reasonable efforts to ensure that the other lawyer conforms to the RPCs. Subsection (c)(1) provides that a lawyer shall be responsible for another lawyer's violation of the RPCs, if

the lawyer orders or ratifies the conduct involved; or (2) if he knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

Here, neither XX nor Mueller had experience with the sale of a structured settlement. Moreover, Mueller failed to personally speak to Heckel. Therefore, contrary to the testimony, he could not have conveyed Heckel's wishes to XX. Because of Mueller's unfamiliarity with these types of proceedings, what type of strategy could he have conveyed to XX? Ultimately, the proofs support that Chirico referred Heckel to Mueller, who directed XX to confer with Chirico about the matter. While Mueller's counsel correctly points out that Mueller was not guilty of violating RPC 5.1(c), Mueller failed to inform XX about the conflict. XX credibly testified he was unaware of the conflict. Therefore, Mueller is guilty of violating RPC 5.1(b), for failing to make reasonable efforts to ensure that XX conformed to the RPCs by not engaging in a conflict of interest.

As to Chirico, it is undisputed that, even though he conducted business through or from a New Jersey address, he failed to maintain New Jersey trust and business accounts, as R. 1:21-6 requires, until the OAE instructed him to do so. Notwithstanding that no "complaints" were filed against him in this regard, his failure to maintain the accounts is a violation of RPC 1.15(d).

Chirico, however, made a misrepresentation to the court that he had not referred Heckel to Mueller. Moreover, even though he implied that he had corrected the misrepresentation "off-the-record," the proofs do not support this assertion. In addition, his justification for denying that he made the referral in the first place, that Heckel's statement confused him, simply strains credulity. Chirico's conduct in this regard violated RPC 3.3(a)(1) and (5) (false statement of material fact or law to a tribunal and failure to disclose material facts knowing that the omission is reasonably certain to mislead the tribunal), RPC 8.4(c) (conduct involving dishonesty, fraud, deceit, or misrepresentation), and RPC 8.4(d) (conduct prejudicial to the administration of justice).

This case does not present the same egregious circumstances found in In re Legome, 226 N.J. 590 (2016) (disbarred) or In re Torre, 223 N.J. 538 (2015) (one-year suspension), where the attorneys engaged in multiple ethics violations, including conflicts of interest, which resulted in substantial harm to vulnerable clients. In the former case, the client suffered from a cognitive impairment; in the latter, the client was dependent and elderly. Here, the witnesses described Heckel as physically impaired, but there was no proof that he was mentally impaired. In fact, the witnesses characterized him as sharp and capable of negotiating his own deals. Nevertheless, Heckel's interests were not protected.

It is well-settled that cases involving a conflict of interest, absent egregious circumstances or serious economy 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).

Periods of suspension have been imposed where an attorney's conflict of interest has caused serious economic injury or egregious circumstances exist. See, e.g., In re Fitchett, 184 N.J. 289 (2005) (three-month suspension for attorney who engaged in multiple conflicts of interest by continuing to represent a public entity after switching law firms and becoming associated with another party to the same litigation; the client suffered serious economic injury); In re Wildstein, 169 N.J. 220 (2001) (three-month suspension for attorney who engaged in a conflict of interest by serving as the executor and trustee to an estate that held an interest adverse to another estate of which the same attorney was the executor and beneficiary; he added himself as a residuary beneficiary to the second estate, thereby creating an improper testamentary gift; he also failed to disclose material facts to the beneficiaries of both estates and made misrepresentations to disciplinary authorities during the investigation of the matters; he also was guilty of gross neglect, lack of diligence, and failure to communicate with his clients); In re Butler, 142 N.J. 460 (1995) (three-month suspension for attorney who failed to inform his

clients, the sellers, of the buyers' contract to sell the property to a third party; the contract had been executed before the closing of title with the attorney's client; he also represented both parties in negotiating a contract of sale and in negotiating a modification of its terms); and In re Feranda, 154 N.J. 4 (1998) (six-month suspension for attorney who engaged in a conflict of interest by simultaneously representing two parties to a real estate transaction; he also failed to safeguard the client's funds pending completion of the transaction; the harm to the client and his denial of wrongdoing were considered as aggravating factors).

Here, because Judge Wellerson did not permit the matter to proceed to a hearing on the merits, the amount of the potential injury was not quantified and is too speculative to be given any weight, notwithstanding the judge's determination that Heckel would have been left destitute if the transaction were approved.

Attorneys who fail to properly supervise their associates typically receive reprimands, even when other non-serious violations are present. See, e.g., In re Fusco, 142 N.J. 636 (1995) (attorney improperly delegated his recordkeeping responsibilities for his law firm trust account to an associate over whom he had direct supervisory authority; he failed to make reasonable efforts to ensure that the associate kept the trust account records in

conformance with R. 1:21-6; due to the lack of reasonable supervision, that associate knowingly misappropriated client funds, resulting in a large overdraft in the trust account).

We determine that Mueller's conflict of interest (RPC 1.7(a)) and failure to supervise XX (RPC 5.1(b)) warrant a reprimand.

Respondent Chirico was also guilty of a conflict of interest. He referred the matter to Mueller. He claimed he did so because he knew MLG was a competent law firm. However, neither Mueller nor XX had experience with sales of structured settlements and, therefore, relied on Chirico's expertise. Thus, as the OAE speculated, Chirico may have referred Heckel to MLG assuming, or knowing, that Mueller would not "shop around" for a better deal.

Chirico is also guilty of making misrepresentations to the court, to the OAE, and to the DEC. Initially, he denied referring Heckel, then, according to Judge Wellerson, he never rectified the misstatement, despite implying to the OAE that he had done so "off-the-record." He further asserted that he suffered from confusion over Heckel's statement that, perhaps, Heckel had used a phone book to locate Mueller himself. It is not credible that Heckel, from Atlantic County, not only chose a Bergen County telephone directory to find a lawyer, but also randomly chose Mueller, an attorney with whom Chirico had a relationship. It is also odd that the case was venued in Ocean County, when

Heckel resided in Atlantic County. As the DEC found, Chirico's testimony was in many respects not credible. Chirico is, therefore, guilty of violating RPC 3.3(a)(1), RPC 3.3(a)(5), RPC 8.4(c), and RPC 8.4(d) because his deceitful actions caused the denial of the Patriot petition. He also violated RPC 1.15(d) by, admittedly, failing to maintain required attorney business and trust accounts.

Lack of candor to a tribunal has resulted in discipline ranging from an admonition to a long-term suspension. See, e.g., In the Matter of George P. Helfrich, Jr., DRB 15-410 (February 24, 2016) (admonition imposed on attorney who failed to notify his client and witnesses of a pending trial date, a violation of RPC 1.4(b); thereafter, he appeared at two trial dates but failed to inform the trial judge and his adversary that he had not informed his client or the witnesses of the trial date; consequently, they were unavailable for trial, a violation of RPC 3.3(b) and RPC 3.4(c); at the next trial date, the attorney finally informed the court and his adversary that his client, the witnesses, and his own law firm were unaware that a trial had commenced, resulting in a mistrial; on the same day, the attorney informed his law firm of the offense; the law firm notified the client of what had happened, reimbursed the client $40,000 in attorney fees and costs, stripped the attorney of his shareholder status, suspended him for an undisclosed period of time and, after his

reinstatement to the firm, required his legal work to be monitored by senior partners; in aggravation, we found that, prior to the attorney's admission of wrongdoing, judicial resources had been wasted when the court impaneled a jury and commenced a trial; in mitigation, we noted that it was the attorney's first ethics infraction in his thirty-eight-year legal career; he suffered from anxiety and high blood pressure at the time of his actions; the client suffered no pecuniary loss; his law firm had demoted him from shareholder to hourly employee, resulting in significantly lower earnings on his part; and he displayed remorse and a commitment to working hard to regain the trust of the court, his adversaries, and the members of his firm); 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 re Marraccini, 221 N.J. 487 (2015) (reprimand imposed on attorney who had attached to approximately fifty eviction complaints, filed on behalf of a property management company, verifications that had been pre-signed by the manager, who then died; the attorney was unaware that the manager had died and, upon learning of that information,

withdrew all complaints; violations of RPC 3.3(a), RPC 8.4(c), and RPC 8.4(d); mitigation considered); 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 Mazeau, 122 N.J. 244 (1991) (attorney reprimanded for failure to disclose to a court his representation of a client in a prior lawsuit, when that representation would have been a factor in the court's ruling on the attorney's motion to file a late notice of tort claim); In re Duke, 207 N.J. 37 (2011) (censure for attorney who failed to disclose his New York disbarment on a form filed with the Board of Immigration Appeals; the attorney also failed to adequately communicate with the client and was guilty of recordkeeping deficiencies; prior reprimand; the attorney's contrition and efforts at rehabilitation justified only a censure); In re Monahan, 201 N.J. 2 (2010) (censure for attorney who submitted two certifications to a federal district court in support of a motion to extend the time within which to file an appeal; the attorney misrepresented that, when the appeal was due to be filed, he was seriously ill and confined to his home on bed rest and, therefore, was either unable to work or unable to prepare and file the appeal; the attorney also practiced law while ineligible to do so for failure to pay the attorney annual

assessment); In re Trustan, 202 N.J. 4 (2010) (three-month suspension for attorney who submitted to the court a client's case information statement that falsely asserted that the client owned a home and drafted a false certification for the client, which was submitted to the court in a domestic violence trial; she was also guilty of a conflict of interest and conduct prejudicial to the administration of justice); In re Stuart, 192 N.J. 441 (2007) (three-month suspension for assistant district attorney in New York who, during the prosecution of a homicide case, misrepresented to the court that he did not know the whereabouts of a witness; in fact, the attorney had made contact with the witness four days earlier; compelling mitigation justified only a three-month suspension); In re Kernan, 118 N.J. 361 (1990) (three-month suspension for attorney who, in his own divorce matter, submitted to the court a case information statement with a list of his assets, and, one day before the hearing, transferred to his mother one of those assets, an unimproved 11.5-acre lot, for no consideration; the attorney's intent was to exclude the asset from marital property subject to equitable distribution; the attorney did not disclose the conveyance at the settlement conference held immediately prior to the court hearing and did so only when directly questioned by the court; the attorney also failed to amend the certification of his assets to disclose the transfer of the lot ownership; prior private reprimand); In re Forrest, 158 N.J. 428 (1999)

(six-month suspension for attorney who failed to disclose the death of his client to the court, to his adversary, and to an arbitrator; the attorney's motive was to obtain a personal injury settlement); 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).

Here, Chirico's conduct was significantly more serious than Mueller's, as he initiated the conflict of interest with the referral to Mueller and then lied about it to the court. Chirico's conduct is on par with Trustan's (three-month suspension), who was guilty of a conflict of interest, making a false statement to a tribunal, engaging in a misrepresentation, and engaging in conduct prejudicial to the administration of justice.

Thus, for Chirico's multiple violations (RPC 1.7(a), RPC 1.15(d), RPC 3.3(a), RPC 8.4(c), and RPC 8.4(d)), we determine that a three-month suspension is adequate discipline, based on the above precedent.

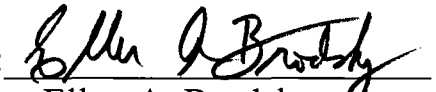
As to respondent Mueller, Members Gallipoli and Zmirich voted to impose a censure.

As to respondent Chirico, Members Boyer, Rivera and Singer voted to impose a censure.

Member Hoberman did not participate in either matter.

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 Gregory K. Mueller
Docket No. DRB 18-187

Argued: September 20, 2018

Decided: December 6, 2018

Disposition: Reprimand

Members	Reprimand	Censure	Recused	Did Not Participate
Frost	X			
Clark	X			
Boyer	X			
Gallipoli		X		
Hoberman				X
Joseph	X			
Rivera	X			
Singer	X			
Zmirich		X		
Total:	6	2	0	1

Ellen A. Brodsky
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Vincent Chirico
Docket No. DRB 18-188

Argued: September 20, 2018

Decided: December 6, 2018

Disposition: Three-Month Suspension

Members	Three-Month Suspension	Censure	Recused	Did Not Participate
Frost	X			
Clark	X			
Boyer		X		
Gallipoli	X			
Hoberman				X
Joseph	X			
Rivera		X		
Singer		X		
Zmirich	X			
Total:	5	3	0	1

Ellen A. Brodsky
Chief Counsel