Supreme Court of New Jersey
Disciplinary Review Board
Docket No. DRB 18-343
District Docket No. XIV-2013-0697E

In the Matter of

Joseph Anthony Ferriero

An Attorney At Law

Decision

Argued: January 17, 2019

Decided: May 1, 2019

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

Robert Hille appeared on behalf of respondent.

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

This matter was before us on a motion for final discipline filed by the Office of Attorney Ethics (OAE), pursuant to R. 1:20-13(c), following respondent's conviction, in the United States District Court for the District of New Jersey (USDNJ), of: one count of racketeering, in violation of the Racketeer Influenced and Corrupt Organization Act (RICO) (18 U.S.C.

§ 1962(c) and New Jersey's bribery in official and political matters statute (N.J.S.A. 2C:27-2)); one count of using the United States mail in aid of a racketeering enterprise, in violation of the Travel Act (18 U.S.C. § 1952(a)(1)-(3)); and one count of wire fraud (18 U.S.C. § 1343). We determine to recommend respondent's disbarment.

Respondent was admitted to the New Jersey bar in 1982, the District of Columbia bar in 1988, and the New York bar in 1993. He has no prior discipline in New Jersey. On July 21, 2015, he was temporarily suspended as a result of his conviction in this matter. In re Ferriero, 222 N.J. 34 (2015). He remains suspended to date.

On September 11, 2013, respondent was charged in a five-count federal grand jury indictment with racketeering, bribery, and wire fraud, arising out of a scheme that he devised while serving as the chairperson of the Bergen County Democratic Organization (BCDO).

John Carrino owned and operated a software development company, C3 Holdings, LLC. C3 sold emergency notification software systems to local governments. As head of the BCDO, respondent arranged with Carrino to exert pressure on officials in several Bergen County municipalities, over whom he had some political influence, to enter into government software contracts. In

turn, he would receive from C3 a percentage of the gross revenue derived from municipal contracts awarded to C3.

On April 16, 2015, a federal jury found respondent guilty of several acts that violated the RICO statute and the New Jersey bribery statute. Specifically, as alleged in count one of the indictment, respondent had repeatedly used his position as BCDO chairperson and his influence as a high-ranking party official[1] to convince municipal officials in the Borough of Dumont, Township of Teaneck, Borough of Wood Ridge, Township of Saddle Brook, and the Borough of Cliffside Park to enter into contracts with C3 for which respondent received "kickbacks" from C3. Respondent received $11,875 in kickbacks from C3 contracts with the above municipalities. He never disclosed to the public officials that he stood to profit financially if C3 entered into contracts with public entities as a result of respondent's influences and recommendations.

Under count three of the indictment, respondent was found guilty of a Travel Act violation for using the United States mail and its facilities in

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[1] N.J.S.A. 2C:27-1 defines party official as "a person who holds an elective or appointive post in a political party in the United States by virtue of which he directs or conducts, or participates in directing or conducting party affairs at any level of responsibility."

interstate commerce to distribute the proceeds of, and to promote, state law bribery, in aid of the C3 racketeering enterprise. Respondent created SJC Consulting, LLC (SJC), a Nevada limited liability company of which he was the sole member, to receive payments from C3. Respondent executed SJC incorporation documents, and then used the United States mail to send them from New Jersey to Nevada. He also used the mail or its facilities in respect of two additional agreements involving SJC and others.

Finally, respondent was convicted of wire fraud under count five. On July 9, 2008, he transmitted e-mails from Carrino to Borough of Cliffside Park officials, identifying Carrino as the sole member of C3. That document deliberately failed to disclose to those public officials respondent's financial interest in C3's contract with the Borough.

On December 4, 2015, the Honorable Esther Salas, U.S.D.J., sentenced respondent to thirty-five months in prison on each of the three counts, to be served concurrently, and ordered him to pay $11,875 in restitution to the municipalities he victimized.

At sentencing, Assistant United States Attorney, Rachael Honig, emphasized the lack of distinction between a public bribery official and a party official, for purposes of respondent's bribery crimes:

[C]orruption in this state has had, and continues to have a fundamental and corrosive effect on politics, and on the way that politics and politicians are perceived in New Jersey, fairly or unfairly.

And that is no less true when the person who is taking bribes is a party chairman, rather than a public official. And that is why the New Jersey bribery statute treats those people in exactly the same way, and has since the late seventies.

Indeed, I would submit that corruption by a party chairman can have a more fundamental and more corrosive effect on New Jersey politics and the perception of politics in New Jersey than corruption by, for example, a very low-level public official. . . . A party chairman has the ability to raise and spend large amounts of money on political campaigns. A party official has fewer campaign finance reporting obligations and no, absolutely no financial disclosure obligations.

And most importantly, a party chairman can lurk in the shadows, as we saw in this case. . . . Party chairmen can stand behind the scenes operating the leaves [sic] of power rather than in the full glare of the public spotlight. That makes it a very powerful position. . . . We are talking about millions of dollars. That gives a party chairman tremendous influence over people who want to be in public office, and people who are in public office.

[OAEbEx.C32-3 to 34-1.][2]

[2] OAEb refers to the September 25, 2018 OAE brief in support of the motion for final discipline.

Respondent appealed his December 14, 2015 conviction to the United States Court of Appeals for the Third Circuit, which, on August 4, 2017, affirmed the jury conviction, holding in part as follows:

> [Respondent's] Travel Act and RICO convictions both rest on the jury's determination that, as a party official, he violated New Jersey's prohibition against "[b]ribery in official and political matters." N.J. Stat. Ann. § 2C:27-2. According to that provision, "[a] person is guilty of bribery if he directly or indirectly offers, confers or agrees to confer upon another, or solicits, accepts or agrees to accept . . . [a]ny benefit as consideration for a decision, opinion, recommendation, vote or exercise of discretion of a public servant, party official or voter on any public issue or in any public election." *Id.*
>
> The record contains sufficient evidence to support the jury's conclusion Ferriero violated New Jersey's bribery statute. He agreed to accept payments from John Carrino as consideration for a particular recommendation on a public issue – namely, his favorable recommendation to Democrats holding office in Bergen County on the public issue of whether their towns should contract to hire C3.
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> [OAEbEx.E,11.][3]

The Third Circuit Court found that:

> Since Carrino sought municipal contracts for C3, Ferriero was uniquely situated to influence

[3] The Third Circuit's decision is reported at United States v. Ferriero, 866 F.3d 107 (3d cir. 2017).

> Democratic municipal officials by virtue of his position as their county party chair. The two struck an agreement. Ferriero would recommend C3 to local governments in exchange for a 25- to 33-percent commission on contracts for the towns that ultimately hired the company . . . .
>
> To that end, Ferriero had drawn up a list of target Bergen County municipalities with corresponding names of Democrats in local office, and over the course of about a year, he "pushed hard for C3." . . .
>
> Ferriero made these recommendations at BCDO sponsored events, at local political fundraisers, at informal meetings, or simply over email.
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> [OAEbEx.E3 to 4]

Finally, the Third Circuit concluded that respondent's bribery scheme was directly related to his role as a party official:

> Therefore, the question is whether a rational juror could conclude the C3 bribery scheme was one means by which Ferriero participated in the conduct of party business.
>
> The record contains more than enough evidence for a rational juror to conclude that it was. A rational juror could conclude it was party business when Ferriero recommended vendors to party members holding local office. As the District Court observed, multiple witnesses testified Ferriero regularly recommended vendors to local Democratic officials. In fact, the BCDO hosted an annual gala at the municipal convention where local officials came to find vendors and providers of professional services.

> And, as party chair, Ferriero's recommendations carried great weight. A rational juror could conclude that when Ferriero made certain recommendations to local Democratic officials (regarding vendors or otherwise), it was party business by virtue of the considerable influence he held over those officials' reelection and career prospects. Indeed, Ferriero's list of target officials and towns in Bergen County was almost entirely composed of Democratic officials and towns controlled by Democrats. A rational juror could conclude Ferriero conducted party business and the C3 bribery scheme in tandem when he carried out the scheme by recommending C3 to local Democratic officials and using his influence to urge that they award C3 contracts. A rational juror could therefore conclude the pattern of bribery was one means by which Ferriero participated in the conduct of the BCDO's affairs.
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> [OAEbEx.E18 to 19, footnote omitted.]

On February 20, 2018, the Supreme Court of the United States denied respondent's petition for a writ of certiorari. Ferriero v. Untied States, 138 S.Ct. 1031 (2018).

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 conviction of racketeering and bribery, use of the United States mail in aid of a racketeering enterprise, and wire fraud 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." The facts underlying respondent's conviction also establish that he was engaged in conduct that was dishonest, a violation of 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" (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).

That an attorney's conduct did not involve the practice of law or arise from a client relationship will not excuse an ethics transgression or lessen the degree of sanction. In re Musto, 152 N.J. 165, 173 (1997). Offenses that evidence ethics shortcomings, although not committed in the attorney's

professional capacity, may, nevertheless, warrant discipline. In re Hasbrouck, 140 N.J. 162, 167 (1995). The obligation of an attorney to maintain the high standard of conduct required by a member of the bar applies even to activities that may not directly involve the practice of law or affect his or her clients. In re Schaffer, 140 N.J. 148, 156 (1995).

The OAE urged us to recommend respondent's disbarment, and cited several cases involving attorneys who were disbarred for their involvement in official bribery: In re Cammarano, 219 N.J. 415, 423 (2014), In re Izquierdo, 209 N.J. 5 (2012), In re Gallerano, 138 N.J. 44 (1994), In re Jones, 131 N.J. 505 (1993), In re Tuso, 104 N.J. 59 (1986), and In re Hughes, 90 N.J. 32 (1982). We discuss these cases, and others, below. Here, respondent was convicted of bribery and, based on precedent, we determine that he should be disbarred.

In In re Cammarano, 219 N.J. 415, the attorney was in the midst of a 2009 campaign to become the mayor of Hoboken, New Jersey. On several occasions between May and July 2009, he met with Solomon Dwek, a cooperating federal government witness posing as a real estate developer who sought to purchase influence in the form of expedited zoning approvals for land-development matters in Hoboken. He did so through a series of contributions to Cammarano's mayoral campaign. In all, Cammarano accepted

$25,000 from Dwek, including funds to bring the campaign out of debt after Cammarano won a run-off election in June 2009. On July 23, 2009, the Federal Bureau of Investigation (FBI) arrested Cammarano, about a month into his tenure as mayor. Id. at 417.

A week later, Cammarano resigned, and ultimately pleaded guilty to one count of conspiracy to obstruct interstate commerce by extortion under color of official right, a violation of 18 U.S.C.A. § 1951(a). He was sentenced to a two-year federal prison term and two years of supervised release thereafter, and ordered to pay $25,000 restitution. Ibid.

The Court concluded: "The public's confidence in government – a government operating fairly and honestly for the general welfare of the people – is undermined just as thoroughly by a mayor with his hand out waiting for bribes as by the one actively seeking a bribe." Id. at 423. In disbarring Cammarano, the Court held that, "Going forward, any attorney who is convicted of official bribery or extortion should expect to lose his license to practice law in New Jersey." Ibid.

Here, respondent did not have prior notice of the Court's announcement in Cammarano, because his misconduct pre-dated the issuance of that decision. However, the holding in Cammarano did not create new law with regard to the discipline imposed on an attorney who engages in bribery. Indeed, New Jersey

attorney disciplinary jurisprudence has an unfortunately lengthy history of disbarment cases involving bribery, most pre-dating respondent's criminal conduct.

In In re Izquierdo, 209 N.J. 5, the attorney was disbarred after pleading guilty in the USDNJ to an information charging him with knowingly and willfully making materially false, fictitious, and fraudulent statements and representations to agents of the FBI about having provided a local zoning official with multiple cash payments or items of value in exchange for official favors and referrals. The Court found that the acts constituted public corruption that undermined confidence in the integrity of governmental affairs. Although Izquierdo was not charged criminally with bribery, the Court equated his conduct to bribery in its determination to disbar him.

Likewise, in In re Gallerano, 138 N.J. 44, as Deputy Director of Compliance, Division of Alcoholic Beverage Control (ABC), the attorney accepted $2,500, and pleaded guilty to the solicitation and acceptance of a gift while a public servant. At the plea hearing, Gallerano admitted that he contacted Kenneth Weiner, the attorney for a sports bar owner, who also represented an automobile dealership from which Gallerano sought a better deal on an automobile that his son wanted to buy. At the time, the ABC had an enforcement action pending against the sports bar liquor license. Unbeknownst

to Gallerano, Weiner was cooperating with the police. Gallerano contended that he had been entrapped, denied any criminal purpose or intent, and claimed that his acceptance of the $2,500 did not influence him in his performance of his duties at the ABC. He sought to avoid disbarment, presenting mitigation, including that he was a disabled World War II veteran, that he never compromised his public official or attorney position, and that he had retired from the practice of law. In disbarring him, the Court agreed that financial gain was at the heart of Gallerano's misconduct. In the Matter of Pascal P. Gallerano, DRB 93-225 (April 20, 1994) (slip op. at 5-8).

Similarly, in In re Jones, 131 N.J. 505, a deputy attorney general pleaded guilty to the third-degree crime of soliciting a gift while a public servant. Jones represented the New Jersey Board of Psychological Examiners and solicited a payment, in the form of a loan, from a doctor who had filed a complaint seeking the revocation of a psychologist's license. At the time, Jones was under severe emotional and financial stress. His father had passed away, leaving behind debts that threatened the loss of his mother's house. In addition, Jones' car had been stolen and the insurance company reimbursed only a small portion of the loss. Jones' recent discharge from personal bankruptcy prevented him from borrowing money from more conventional sources. The Court found that "[b]ribery of a public official 'is a blight that

destroys the very fabric of government'" (citation omitted). Citing In re Hughes, 90 N.J. 32, 37 (1982), the Court stated:

> Certain acts by attorneys so impugn the integrity of the legal system that disbarment is the only appropriate means to restore public confidence in it. Bribery of a public official is surely one of those cases. It has devastating consequences to the bar, the bench, and the public, and especially the public's confidence in the legal system.
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> [In re Jones, 131 N.J. at 513.]

The Court in Jones remarked that bribery of a public official has invariably resulted in disbarment, citing, among other cases, In re Rigolosi, 107 N.J. 192 (1987), In re Conway, 107 N.J. 168 (1987), In re Sabatino, 65 N.J. 548 (1974), In re Colsey, 63 N.J. 210 (1973), In re Hyett, 61 N.J. 518 (1972), and In re Goode, 58 N.J. 420 (1971). The Court found that Jones' financial needs, emotional stress, inexperience at the bar, remorse, or letters of support from his mother and several members of the community were insufficient mitigating factors to reduce the severity of Jones' discipline. The Court found that Jones committed the crime for his personal gain; that his conduct seriously damaged the public's confidence in the Office of the Attorney General, the chief law-enforcement agency in the State; and that he impugned the "integrity of the legal system." Jones was disbarred.

In yet another bribery case, In re Tuso, 104 N.J. 59, the attorney was disbarred for attempting to bribe a school board member to obtain a building contract for an architectural client seeking the contract for a new high school. Mitigating factors were the fact that the attorney, who was admitted to the bar in 1960, had no disciplinary history; rendered community service; and served as a municipal court judge. The Court determined, however, that the mitigating factors did not outweigh the attorney's crime, which was not the product of a single, aberrational act. Rather, over a period of months, the attorney participated in a calculated scheme to corrupt a public official and subvert government standards for fair and competitive bidding.

Finally, in In re Hughes, 90 N.J. 32, the attorney was disbarred for bribing an Internal Revenue Service (IRS) agent to remain silent about the fact that the attorney had falsified federal tax lien releases to indicate that federal tax liens on the attorney's parents' property had been released. Hughes pleaded guilty to bribing an IRS agent and forging public documents. Upon the death of Hughes' father, with whom he had practiced law, Hughes discovered that, instead of paying transfer inheritance taxes in a client's estate matter, his father had converted the funds. Although Hughes had no legal obligation to do so, he made installment payments of almost $40,000 to discharge the estate's tax liability. While making those payments, Hughes learned that federal tax

liens on real estate owned by his mother had resulted from his father's failure to pay federal taxes. To protect his mother from learning of his father's wrongdoing, Hughes sought to satisfy the tax liens but was short of funds to do so. When his efforts to arrange either a settlement or a payment schedule with the IRS proved unsuccessful, he forged the tax lien releases. During a meeting with an investigating IRS agent, who was using a recording device, Hughes offered and paid the agent $1,000 to ignore the forgeries. Id. at 35.

The Hughes Court announced that, in a bribery case, mitigating circumstances might warrant the imposition of a sanction less than disbarment. It recognized, as substantial mitigating factors, the absence of Hughes' personal gain from his wrongdoing and his repayment of estate taxes without any legal obligation to do so. The Court, however, added that

> these considerations are not sufficient to overcome the presumption that attorneys who bribe public officials are a threat to the public and the legal system. Hughes not only bribed an IRS official but deliberately falsified public documents. These acts severely damage public confidence in the legal system. Moreover, a person willing to resort to such means to accomplish his goals, no matter how beneficent the goals may be, is a danger to the legal system. The combination of these two offenses compels us to conclude that the public will not be adequately protected by any disposition short of disbarment.
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> [Id. at 39.]

Except for Izquierdo, the remaining eleven cases cited above pre-dated respondent's conduct. Respondent, therefore, was on notice that the Court views bribery as serious wrongdoing for which disbarment is in order.

In contrast, attorneys who were involved only on the fringes of a single act of bribery have received long-term suspensions, rather than disbarment. In 2002, an attorney who was tangentially involved in a bribery plot escaped disbarment. In In re Caruso, 172 N.J. 350 (2002) the attorney was suspended for three years after pleading guilty in the USDNJ to one count of conspiracy to travel in interstate commerce to promote and facilitate bribery, in violation of 18 U.S.C.A. § 371. While Caruso was serving as the municipal prosecutor for the city of Camden, the mayor told Caruso that he intended to reappoint the Camden municipal public defender, contingent on the public defender's $5,000 contribution to a political committee. After agreeing to serve as the mayor's intermediary, Caruso solicited and received the $5,000. In the Matter of Joseph S. Caruso, DRB 01-343 (February 8, 2002) (slip op. at 2).

In voting for a three-year suspension, we considered that, unlike attorneys who "either orchestrated the bribery or derived a benefit from it," Caruso's role as intermediary was relatively minor. In addition, there were no identifiable victims in Caruso's scenario. Furthermore, he lent substantial assistance to federal law enforcement at the mayor's corruption trial. Id. at 5-6.

Here, however, respondent was a part of the orchestration of the bribery scheme, and he benefited from it. Moreover, there were distinct victims – the several municipalities that suffered financial harm as a result of his acts.

Similarly, forty years ago, in a 1979 case, another attorney escaped disbarment in a would-be bribery scheme. In In re Mirabelli, 79 N.J. 597 (1979), the attorney received a three-year suspension after a November 9, 1977 guilty plea to a Grand Jury accusation charging him with bribery, in violation of N.J.S.A. 2A:93-6. Mirabelli admitted having received $2,500 from an undercover law enforcement official, paid on behalf of his client, Patrick J. Kelly, for the ostensible purpose of bribing a Union County Assistant Prosecutor to procure a non-custodial sentence in respect of criminal charges then pending against Kelly in Union County. Id. at 598. Mirabelli was sentenced to one to three years in prison, but the court suspended execution of the sentence, placing him on unsupervised probation for three years, with conditions. Id. at 599. The sentencing court considered that Mirabelli had not actually attempted to bribe the Assistant Prosecutor. Rather, he concocted the bribery story as a ploy to extract fees from Kelly, who had given him just $1,500 of a $2,500 retainer in a case with estimated fees between $10,000 and $15,000. The sentencing court further took into account Mirabelli's serious

emotional, physical, and psychological problems, and the impact on him of a short-lived, tumultuous second marriage. Id. at 599.

Like the sentencing court, in imposing discipline, the Court considered in mitigation, the effects that marital problems had on Mirabelli's emotional stability, and the adverse effect they had on his judgment. Id. at 602. The Court also noted his distinguished background in civic and public affairs. Ibid.

In imposing a three-year suspension for Mirabelli's acts, the Court commented:

> While it is not at all clear that respondent's conduct falls squarely within the four corners of the bribery statute, N.J.S.A. 2A:93-6, we need not resolve that issue in the context of this disciplinary proceeding and we go no further than to note the question for it is our practice to accept a criminal conviction as conclusive evidence of guilt.
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> [Id. at 601-602.]

The attorney in Mirabelli, unlike respondent, did not actually bribe anyone. Rather, he invented a bribery story to pry fees from a slow-paying client. In our matter, there are no lingering questions whether respondent's bribery conviction was on all fours with the statute he violated.

For respondent's marginally less serious crime of wire fraud, attorneys convicted of mail or wire fraud have generally received lengthy periods of suspension. See, e.g., In re Mueller, 218 N.J. 3 (2014) (three-year retroactive

suspension for attorney convicted of conspiracy to commit wire fraud, in violation of U.S.C § 1349); In re Roth, 199 N.J. 572 (2009) (three-year retroactive suspension for attorney convicted of wire fraud (18 U.S.C. §§ 1343 and 2) and mail fraud (18 U.S.C. §§ 1341 and 2)); In re Abrams, 186 N.J. 588 (2006) (three-year retroactive suspension for attorney who pleaded guilty to two counts of wire fraud); and In re Noce, 179 N.J. 531 (2004) (three-year retroactive suspension for attorney who pleaded guilty to conspiracy to commit mail fraud).

In a February 4, 2019 brief to us (Rb), respondent's counsel urged the imposition of a retroactive, three-year suspension on the basis that, at sentencing, Judge Salas treated respondent less harshly than she would have, had he been a public official. Specifically, Judge Salas stated:

> As to party officials versus public official, the Court agrees with defense counsel and concludes that Mr. Ferriero's base offense level . . . under the section guideline 2(c)1.1 is 12 rather than 14. 2(c)1.1 provides that the base offense level for a bribe is, quote, 14, if the defendant was a public official, or 12 otherwise.
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> [Rb16.]

In hopes of staving off disbarment, respondent presented mitigation in the form of letters from twenty-eight individuals and a video with additional testimonials. He has been a member of the bar for thirty-six years without prior

discipline, performed legal services on a pro bono basis, and gathered the testimonials of members of the bar and the public as to his fine character, his qualifications as an attorney, and his service to the community as a firefighter and in other respects.

In respondent's brief to us, he argued that, at sentencing, Judge Salas reduced his sentence because he was a party official, not a public official, ascribing weight to a distinction he believed should warrant discipline short of disbarment. Although Judge Salas made this distinction, we note that she did so in conformity with federal sentencing guidelines, not as a substantive finding that bribery by a party official is less egregious than bribery by a public official. This distinction for federal criminal sentencing purposes has no independent force on our review of respondent's misconduct in the context of the New Jersey attorney discipline system. Notwithstanding, the majority members of this Board would be remiss if we did not address this distinction in greater detail, given the position of the dissenting members.

First, as discussed above, the New Jersey bribery statute, without question, makes no distinction between party official and public official. The black letter law is clear in N.J.S.A. 2C:27-2. While these individuals have different roles and responsibilities to the public, each is equally criminally liable if he or she "directly or indirectly offers, confers, or agrees to confer

upon another, or solicits, accepts or agrees to accept from another: [] [a]ny benefit as consideration for a decision, opinion, recommendation, vote or exercise of discretion." At respondent's sentencing, Assistant United States Attorney Rachael Honig made a compelling argument that party officials pose a greater threat to the public than public officials because they are not subject to the same accountability as public officials. Although we may not agree that party officials should be viewed as more dangerous to the public than public officials, we see no need to interject a distinction in the bribery statute for the benefit of respondent.

Second, respondent argued that the holding in Cammarano is limited because the attorney in that case was a public official and, thus, the decision does not extend to party officials. This, however, is misplaced circular reasoning. Respondent also argued that Cammarano does not apply to his case because it was decided after his misconduct, and he did not have notice of its holding. Yet, respondent contended that Cammarano exemplifies the limitation that only public officials must face disbarment for engaging in bribery. In our view, the Court did not contemplate such a limitation, but simply addressed the facts of the case, in which Cammarano was a public official. Respondent cannot use that case as both a shield and a sword, arguing that it applies when

it suits his position, and that it does not apply when it does not support his contention.

Third, by characterizing the payments he received as "commissions," respondent argues that his receipt of such payments was proper or that he did not believe he was engaging in unlawful conduct. This position, however, is contrary to the findings of the federal jury. If the payments were truly "commissions" then respondent would not have been found criminally liable for engaging in valid business transactions. The jury found that respondent possessed the requisite mens rea to be found guilty. Respondent's position is contrary to R. 1:20-14(c)(2), which provides that in motions for final discipline, we may consider mitigating evidence "that is not inconsistent with the essential elements of the criminal matter for which the attorney was convicted . . ." Because a jury convicted respondent of bribery, and that conviction was affirmed on appeal, we must reject respondent's argument that he believed that his actions were lawful.

In short, although we recognize the significance of the Court's decree in Cammarano, we need not rely on it here.

We also considered respondent's mitigation: he has been a member of the bar for thirty-six years without prior discipline; offered his legal services on a pro bono basis; served his community as a firefighter; and gathered

numerous testimonials from members of the bar and the public as to his fine character and service to the community.

Respondent's good deeds have not gone unnoticed. However, as in several of the disbarment cases cited herein, attorneys with compelling mitigation were disbarred for their involvement in official bribery. For example, in Jones, the attorney was disbarred despite substantial financial needs, emotional stress, inexperience at the bar, remorse, and letters of support from his family and members of his community. The mitigating factors were simply insufficient to mitigate the harm caused by his involvement in official bribery.

We find that, here, too, respondent's mitigation is insufficient to overcome his crimes. Consistent with precedent from thirty years of jurisprudence, we recommend respondent's disbarment.

Vice-Chair Clark, Member Boyer, and Member Singer voted for a three-year suspension, retroactive to July 21, 2015, the date of respondent's temporary suspension, for which they have filed a separate dissenting decision.

Member Gallipoli and Member Joseph did not participate.

We further determine to require respondent to reimburse the Disciplinary Oversight Committee for administrative costs and actual expenses incurred in the prosecution of this matter, as provided in R. 1:20-17.

Disciplinary Review Board
Bonnie C. Frost, Chair

By: Ellen A. Brodsky
Ellen A. Brodsky
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Joseph Anthony Ferriero
Docket No. DRB 18-343

Argued: February 21, 2019

Decided: May 1, 2019

Disposition: Disbar

Members	Disbar	Three-Year Suspension, Retroactive	Recused	Did Not Participate
Frost	X			
Clark		X		
Boyer		X		
Gallipoli				X
Hoberman	X			
Joseph				X
Rivera	X			
Singer		X		
Zmirich	X			
Total:	4	3	0	2

Ellen A. Brodsky
Chief Counsel