SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
Docket No. DRB 24-124
District Docket No. XIV-2017-0306E

In the Matter of Donna Marie Conroy
An Attorney at Law

Argued
July 25, 2024

Decided
November 12, 2024

Leighann Reilly appeared on behalf of the
Office of Attorney Ethics.

Dillon J. McGuire appeared on behalf of respondent.

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Introduction

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 (the OAE), pursuant to R. 1:20-13(c)(2), following respondent's guilty plea and convictions, in the United States District Court for the District of New Jersey (the DNJ), of one count of making false entries to deceive the Federal Deposit Insurance Corporation (the FDIC) and a financial institution, in violation of 18 U.S.C. §§ 1005 and 2, and one count of conspiring to make false entries to deceive the FDIC and a financial institution (contrary to 18 U.S.C. § 1005) and to influence the action of the FDIC by making or inviting reliance on a false statement, document, or thing (contrary to 18 U.S.C. § 1007), in violation of 18 U.S.C. § 371. The OAE asserted that these offenses constitute violations of RPC 8.4(b) (committing a criminal act that reflects adversely on a lawyer's honesty, trustworthiness, or fitness as a lawyer) and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit, or misrepresentation).

For the reasons set forth below, we determine to grant the motion for final discipline and conclude that a three-year suspension, retroactive to respondent's June 6, 2017 temporary suspension, is the appropriate quantum of discipline for her misconduct.

Ethics History

Respondent earned admission to the New Jersey bar in 1986, to the New York bar in 1987, and to the Colorado bar in 1990. From about 1989 until her temporary suspension in 2017, she worked as a founding partner at Frieri & Conroy (the Firm) in Cranford, New Jersey.

On June 6, 2017, the Court temporarily suspended respondent from the practice of law based on her criminal conviction underlying this matter. In re Conroy, 229 N.J. 244 (2017).

On November 13, 2018, the Supreme Court of New York, Appellate Division, First Judicial Department, disbarred respondent, effective May 17, 2017, the date of her criminal conviction underlying this matter. Matter of Conroy, 167 A.D.3d 44 (N.Y. App. Div. 2018).

On July 3, 2019, the Supreme Court of Colorado disbarred respondent, effective August 7, 2019, based on her criminal conviction underlying this matter. People v. Conroy-Sheard, 2019 Colo. Discipl. LEXIS 39 (Colo. 2019).[1]

[1] An attorney disbarred in New York may apply for reinstatement upon the expiration of seven years from the entry of the order of disbarment. 22 NYCCR § 1240.16(c). An attorney disbarred in Colorado may apply for reinstatement after disbarment upon the expiration of eight years from the entry of the order of disbarment. Colo. R. Civ. P. 242.39(a)(1).

Facts

On May 17, 2017, before the Honorable Kevin McNulty, U.S.D.J., respondent entered a guilty plea to one count of making false entries to deceive the FDIC and First State Bank (FSB) (18 U.S.C. §§ 1005 and 2) and one count of conspiracy (18 U.S.C. § 371) to make false entries and to influence the action of the FDIC by making or inviting reliance on a false statement, document, or thing (18 U.S.C. §§ 1005, 1007).[2] Respondent entered her plea pursuant to an Information, voluntarily waiving her right to an indictment by a grand jury.

Specifically, respondent admitted that, in 2009 and 2010, while she was serving as outside counsel to FSB, she and several co-conspirators engaged in a

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[2] 18 U.S.C. § 1005 provides, in relevant part, that "[w]hoever makes any false entry in any book, report, or statement of such bank, . . . with intent to injure or defraud such bank . . . or any other company, body politic or corporate, or any individual person, or to deceive any officer of such bank, company, branch, agency, or organization, . . . or the Federal Deposit Insurance Corporation, or any agent or examiner appointed to examine the affairs of such bank, . . . shall be fined not more than $1,000,000 or imprisoned not more than 30 years, or both."

18 U.S.C. § 2 provides that "(a) Whoever commits an offense against the United States or aids, abets, counsels, commands, induces or procures its commission, is punishable as a principal. (b) Whoever willfully causes an act to be done which if directly performed by him or another would be an offense against the United States, is punishable as a principal."

18 U.S.C. § 371 provides, in relevant part, that "[i]f two or more persons conspire either to commit any offense against the United States, or to defraud the United States, or any agency thereof in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy, each shall be fined under this title or imprisoned not more than five years, or both."

18 U.S.C. § 1007 provides that "[w]hoever, for the purpose of influencing in any way the action of the Federal Deposit Insurance Corporation, knowingly makes or invites reliance on a false, forged, or counterfeit statement, document, or thing shall be fined not more than $1,000,000 or imprisoned not more than 30 years, or both."

complex scheme to deceive FSB and government regulators regarding FSB's financial condition.

The scheme involved respondent and four additional co-conspirators. Co-Conspirator One (CC One) was an attorney, licensed to practice law in New Jersey, who provided services to FSB. Co-Conspirator Two (CC Two) held a senior management role at FSB and served on FSB's Board of Directors (the FSB Board). CC Two recommended to the FSB Board that FSB hire Co-Conspirator Three (CC Three) to act as FSB's investment advisor, and CC Three, in turn, identified himself to FSB as undertaking efforts to raise capital for FSB through one of two entities based in Canada (collectively, "the Canadian Company"). Co-Conspirator Four (CC Four) held himself out as a principal of several insurance companies operating in New Jersey.

By September 2009, respondent, CC One, CC Two, and CC Three knew that the FDIC and the New Jersey Department of Banking and Insurance (NJDOBI) (collectively, the Regulators) had determined that FSB was insufficiently capitalized. Around the same time, CC Two proposed to the FSB Board that FSB retain CC Three to restructure its investment portfolio. Accordingly, FSB entered into a contract with CC Three, wiring roughly $12 million dollars in FSB funds to the Canadian Company for CC Three to invest on FSB's behalf.

Subsequently, respondent became involved in an elaborate, three-phase scheme to deceive FSB and the FDIC regarding FSB's true financial health. As summarized in the Information and confirmed by respondent during her May 2017 plea allocution:

> The first phase began with the manufacturing by CC Two and CC Three of Tier One Capital through a transaction that appeared as though outside investors had injected millions of dollars of new capital into the bank when in fact FSB's own money, funneled through CC Three, was misused to obtain that capital. CC Three would end up as the nominal owner of approximately 30% of FSB's stock as a result of this transaction, thereby violating regulatory rules concerning the concentration of ownership of an insured financial institution. As a result, [respondent] and others took steps to disguise the extent of CC Three's FSB stock ownership by falsifying documents purporting to reflect that the share purchase was split among CC Three and two nominees. These nominees were relatives of some of the Co-Conspirators and had no real interest in the purchase of FSB shares. In the second phase of the scheme, various Co-Conspirators caused FSB to make millions of dollars in loans based on material misrepresentations in order to cover up the fraudulent nature of the capital infusion and end inquiries from FSB's auditors. The final phase of the scheme involved lying to the FDIC, among others, about the capital infusion and the loans made to cover it up.
>
> [Ex.A¶3.][3]

[3] "Ex.A" refers to the May 17, 2017 Information, attached to the OAE's brief in support of the motion for final discipline.
"Ex.C" refers to the transcript of the September 29, 2023 sentencing hearing.
"Ex.E" refers to the transcript of the May 17, 2017 plea hearing.

Creating and Executing the Nominee 1 LLC Subscription

During the first phase, involving the infusion of capital into FSB in late 2009, respondent deposited, in one of the Firm's trust accounts, a $7 million check from CC Three toward the purchase of 1.4 million shares of FSB stock. Respondent, in turn, transferred these funds from the Firm's account to FSB.

At the time, according to respondent's sworn statements during her later plea allocution, respondent believed that CC Three used his own funds for the $7 million investment in FSB. Because 1.4 million shares amounted to an almost thirty percent ownership interest in FSB, in violation of at least one FDIC regulation, respondent and her co-conspirators created documents to falsely convey to FSB and the FDIC that the $7 million came from three unrelated parties (the Nominee Entities). These entities included CC Three LLC, with CC Three as its principal, and two other nominees – the Nominee 1 LLC and Nominee 2 LLC – established by CC One for purposes of the scheme, with co-conspirators' family members acting as principals.

To perpetrate the illusion that Nominee 1 LLC constituted a legitimate investor, respondent "created, and caused the creation and execution of, a subscription agreement that she then knew falsely represented that the Nominee 1 LLC was the bona fide purchaser of FSB stock being purchased by the Nominee 1 LLC with its own funds and for its own account as an investment of

the Nominee 1 LLC." During her plea allocution before the District Court, she detailed her actions as follows:

> [PROSECUTOR]: [D]id you in fact have . . . the person who's identified as nominee one, come to your law office and sign the signature page of that [subscription agreement]?
>
> [RESPONDENT]: Yes.
>
> [PROSECUTOR]: And when that signature page was signed by nominee 1, was the signature page of that subscription agreement otherwise blank?
>
> [RESPONDENT]: Yes.
>
> [PROSECUTOR]: And did you then fill in a portion of the page of the subscription agreement?
>
> [RESPONDENT]: Yes.
>
> [PROSECUTOR]: And did you take these actions while serving as outside counsel to FSB on behalf of FSB?
>
> [RESPONDENT]: Yes.
>
> [PROSECUTOR]: And did you then understand that the FSB shares being purchased would actually be owned and controlled by CC3?
>
> [RESPONDENT]: Yes.
>
> [PROSECUTOR]: Was one purpose of the nominee's LLC 1 subscription agreement to conceal information from FSB and . . . the FDIC?
>
> [RESPONDENT]: Yes.

> [PROSECUTOR]: And including to conceal the origin of [$2,390,000], accordingly being expended by nominee LLC 1 to buy FSB stock?
>
> [RESPONDENT]: Yes.
>
> [PROSECUTOR]: And also to conceal the nominee status to nominee LLC 1?
>
> [RESPONDENT]: Yes.
>
> [PROSECUTOR]: And did you then understand as a result of your actions, FSB's books and records would indicate that [$2,390,000] approximately had been received from nominee LLC 1, and nominee LLC 1 then controlled some 478,000 shares of FSB stock?
>
> [RESPONDENT]: Yes.
>
> . . . .
>
> [PROSECUTOR]: When you participated in the execution of the subscription agreement that we just discussed, did you then believe that CC3 was using nominees to invest seven million dollars of CC3's funds to buy FSB's stock?
>
> [RESPONDENT]: Yes.
>
> [Ex.E at 27:9-29:20.]

While taking the above-described actions regarding the sham Nominee 1 LLC, respondent arranged for CC Three to receive a stock certificate for the entirety of the 1.4 million shares, corresponding to the $7 million capital infusion.

Through the above actions, respondent admittedly worked in concert with other co-conspirators to "purposefully conceal[] from the Regulators and one or more FSB officers and board members the origin of the $7 million investment, nominee status of one or more of the Nominee Entities, and CC Three's resulting control of some 30% of FSB's stock."

Moreover, after the subscription agreements were executed to the Nominee Entities, FSB paid CC Three $715,000 as a "finder's fee" for purportedly identifying himself and the Nominee 1 and Nominee 2 LLCs as purchasers of FSB stock. CC Three ultimately divided the $715,000 payment with CC Two, and respondent did not receive any portion of these funds. Nevertheless, she "did not reveal to the Regulators, or to one or more FSB Board members and officers, that FSB's payment of hundreds of thousands of dollars in fees to CC Three was for services not performed; that is, the payments made by FSB to CC Three for purportedly 'finding' Nominee 1 and Nominee 2."

Facilitation of the Fraudulent Issuance of an FSB Loan

Eventually, respondent came to understand that the $7 million dollar capital infusion had not come out of CC Three's own funds but, rather, had resulted from CC Three's misuse of a portion of the $12 million dollars that FSB had sent to the Canadian Company to invest on FSB's behalf. Specifically, CC

Three had used more than half of this sum to secure a margin loan to generate the funds for the capital infusion.

At some point, FSB's third-party auditors began seeking information about the status of the $12 million dollars sent by FSB to the Canadian Company. To conceal the fraudulent nature of the capital infusion, respondent and her co-conspirators arranged for FSB to make millions of dollars in loans (the FSB Loans) to the three Nominee Entities, and then used the proceeds of these loans to pay off the margin loan underlying the capital infusion.

In procuring the FSB Loans, various co-conspirators, including respondent, "created and submitted false documents, made material misrepresentations to FSB, and omitted material facts." Specifically, to enable the Nominee 1 LLC to obtain the loan from FSB, respondent admittedly "draft[ed] a business plan for nominee LLC 1 . . . even though [she was] then supposed to be representing FSB as a lender." In the business plan, she "purposely misstate[d], among other things, the purpose of that loan to nominee LLC 1, the intended user, and how that loan would be" repaid.

In or around May 10, 2010, the three loans closed and a substantial portion of the loan proceeds were sent to CC Three. According to the Information, these loans precipitated a sequence of events which ultimately resulted in the return

to FSB of the roughly $12 million it had transferred to CC Three for investment purposes, in 2009.

Participation in Deceiving FSB and the FDIC

Respondent admitted that, subsequently, she and her co-conspirators further sought to conceal their misconduct regarding the $7 million dollar capital infusion and fraudulent loans. Specifically, starting in or around June 2010, the FDIC sought information about "the source of funds used by the Nominee 1 LLC to purchase its portion of the 1.4 million FSB shares in September 2009;" the status of the loan proceeds; the security used as collateral for the loans; and "the family relationships between [respondent] and CC One and any putative FSB Loan borrower." Respondent and her co-conspirators worked together to prevent FSB and the FDIC from gaining accurate information regarding these topics, so as "to deceive FSB or one or more members" of the FSB Board "about the financial health of FSB."

More specifically, on or about July 19, 2010, respondent and CC One exchanged messages, via e-mail, about how to resist an FSB officer's requests for information about the funds purportedly used by the Nominee 1 LLC to purchase FSB stock in September 2009. Two days later, CC One sent respondent, via e-mail, the script of a fictitious telephone conversation in which

CC Two and Nominee 2 purportedly discussed fictional Nominee 2 LLC shareholders. In addition, on or about August 9, 2010, respondent "affirmatively concealed" information regarding the FSB Loans by admittedly "forward[ing] to an officer of FSB what [she] then knew to be a false email."

Civil and Criminal Proceedings, Guilty Plea, and Sentencing

On November 18, 2010, FSB filed a legal malpractice action in the Superior Court of New Jersey, Union County, against respondent and the Firm, captioned First State Bank v. Frieri Conroy & Lombardo, LLC et. al, Docket No. UNN-L-4595-10.

Thereafter, in October 2011, the NJDOBI closed FSB and named the FDIC as receiver. Consequently, in March 2012, the FDIC assumed the role of plaintiff in the civil matter and removed the case to federal court. FDIC v. Frieri Conroy & Lombardo, LLC, et al., Case 2:12-cv-01951, 2012 U.S. Dist. LEXIS 199632 (Dec. 6, 2012), at *2. According to her counsel, respondent's malpractice insurance ultimately paid significant damages to the FDIC. In December 2013, the court dismissed the civil action following the out-of-court resolution of the matter.

By letter dated December 7, 2016, signed by respondent on January 5, 2017, the government and respondent entered into a plea agreement pertaining to the criminal misconduct described above.

Thereafter, on May 17, 2017, respondent entered her plea of guilty to both counts of the Information, as described above and set forth on the record during the proceeding. During the plea colloquy, respondent admitted that she knowingly and intentionally engaged in the activities that she had described to the court. Further, when asked by federal prosecutor, "are you pleading guilty to Counts One and Two of the information because you are in fact guilty of those charges?" she replied, "Yes." Similarly, when Judge McNulty asked, "Are you pleading guilty because you are guilty in fact?" she replied, "Yes, your Honor."

Also on May 17, 2017, Judge McNulty entered a Consent Judgment and Order of Forfeiture in the matter. Therein, on consent, the court ordered that, as part of respondent's sentence, she forfeit to the United States $25,000, corresponding to the amount of fees paid to her Firm during the course of the admitted conspiracy. Respondent timely satisfied the forfeiture, in accordance with the consent order's requirement to do so "promptly."

On May 18, 2017, the day after respondent's guilty plea and conviction, she reported her conviction, through counsel, to the OAE. Consequently, the

OAE filed a motion for her temporary suspension with the Court, which the Court granted, effective June 6, 2017.

More than six years later, on September 29, 2023, the sentencing proceeding took place before Judge McNulty. The passage of time between respondent's convictions and her sentencing reflected her cooperation in the government's prosecution of her co-conspirators. Moreover, the court and federal prosecutor noted that, although respondent had committed "a serious offense," her criminal misconduct did not appear "quite as serious" in September 2023 as it initially had seemed.

The prosecution argued that, for purposes of applying the sentencing guidelines, the loss in the matter was $715,000, corresponding to the finder's fee obtained by CC Two and CC Three "through the scheme that [respondent] supported through her actions." Conversely, respondent, through counsel, argued that, for purposes of sentencing, no loss should be attributed to respondent.

The court rejected the argument that it should find no loss caused by respondent. Instead, the court stated:

> [T]he plea is to a conspiracy. The plea was lengthy and detailed and included the 715,000. The 715,000 is indisputably a part of that conspiracy, and I get it that the defendant did not personally benefit . . . . [B]ut the measure is not gain, it is loss. And I think it does represent a loss in terms of an asset that, in truth and

> equity, should have belonged to [FSB]. And as a result of this scheme, in which [respondent] admittedly was a knowing participant, that money went out the door.
>
> [Ex.C at 14:23-15:12.]

The government moved for a downward variation in the sentence – specifically, for the imposition of a term of probation. In arguing for a variance, the prosecutor noted that, "[w]hile it is troubling given [respondent's] status as a practicing attorney at the time this fraud was being committed . . . this is [her] first offense." The federal prosecutor further highlighted respondent's compliance with the terms of her pretrial release and expressed "no doubt" she would continue to live a law-abiding life in the future; thus, there was little need for specific deterrence. Moreover, the prosecutor asserted that a probationary sentence, as well as the ramifications experienced by respondent due to her choice to take part in the scheme, would satisfy the need for general deterrence.

Respondent addressed the court:

> I want you to know that I am completely responsible for my actions, and I want you to know that I am totally humbled and remorseful for what happened here.
>
> As I told the probation officer, I can't express how sorry I am for the pain I caused my family, my husband, my children, my 91-year-old mother. Every day I live with regret, and I will live with that for the rest of my life.
>
> You can assure yourself, Your Honor, this will never happen again. I know there's nothing that can make up for what happened but I sincerely hope to be forgiven.

> I look forward to having a great future caring for my family and continuing to be a respectable member of the society and some[]day hopefully Bar Association. I hope the Court takes mercy on me, and thank you for letting me speak.
>
> [Ex.C at 25:2-17.]

The court, granting the downward variance as the government had requested, observed that, although respondent's Firm received a legal fee, respondent apparently had not further benefited directly or personally from the fraud. More specifically, Judge McNulty stated:

> There was a legal fee to her firm but . . . the benefit of the fraud did not flow directly to her in the sense that she had any kind of equity stake in the bank or anything like that. This is the kind of thing that happens and I see it again and again with people in professional positions and in an organization, and there's a kind of a momentum that carries you along.
>
> Your job as a lawyer is to further the interest of the bank and the lines can get blurry and you can find yourself on the wrong side of them. I believe that's what happened in this case. I don't think that [respondent] set out to be some kind of a Bond villain or something. I believe it was something more like that, is my whole sense[.]
>
> [Ex.C at 26:14-27:2.]

The court further noted that respondent had "led a good and seemingly blameless life," "had a professional career" and "loving family," and had a stable employment history that demonstrated her willingness to work, "which

bodes well for [respondent] not ever falling back into this kind of conduct." Moreover, Judge McNulty found the chance of reoffending to be "about as close to zero as I can imagine and the need for specific deterrence . . . correspondingly close to zero."

Judge McNulty gave significant weight to the probationary sentences already received by other, more culpable co-conspirators. He recognized that the government had given reasons for agreeing to these probationary sentences, including "various changes or deterioration in the evidence" and a view that "in terms of prosecutorial resources it seemed like a bad investment of resources and time to continue." Nevertheless, given that more blameworthy co-conspirators had received probationary terms, he determined that imposing a more severe sentence on respondent would not advance the interests of justice or the aim of general deterrence.

Judge McNulty sentenced respondent to time served, a $25,000 fine (in addition to the $25,000 forfeiture that respondent already had paid), and a special assessment of $100 per count, for a total of $200. The court found no need to impose a term of supervised release.

The Parties' Positions Before the Board

Both parties urged the imposition of a two- or three-year suspension, retroactive to June 6, 2017, the effective date of respondent's temporary suspension from the practice of law.

In support of its motion for final discipline, the OAE acknowledged that financial crimes are serious ethics transgressions that are likely to result in disbarment. Continuing, the OAE quoted the Court's enumeration of aggravating factors that normally lead to disbarment in criminal cases:

> Criminal convictions for conspiracy to commit a variety of crimes, such as bribery and official misconduct, as well as an assortment of crimes related to theft by deception and fraud, ordinarily result in disbarment. We have emphasized that when a criminal conspiracy evidences "continuing and prolonged, rather than episodic, involvement in crime," is "motivated by personal greed," and involved the use of the lawyer's skills "to assist in the engineering of the criminal scheme," the offense merits disbarment.
>
> [In re Goldberg, 142 N.J. 557, 567 (1995) (citations omitted).]

The OAE, both in its brief and during oral argument, OAE urged us to find that respondent's misconduct lacked the features that would make disbarment appropriate. Specifically, the OAE asserted that, although respondent, as outside counsel to FSB, used her professional license and legal skills to facilitate fraud, her misconduct took place over a brief period and was

aimed solely to improve FSB's financial condition. The OAE stressed the criminal court's finding that she had not sought to receive any portion of the $715,000 finder's fee and apparently had not benefitted directly or personally from the scheme. The OAE also emphasized the court's view that she had not set out to behave criminally; rather, her job as an attorney was to further FSB's interests, the lines became blurry, and she found herself on the wrong side of the lines. Moreover, the OAE asserted that the record contained no evidence that greed had motivated her misconduct.

Based on relevant disciplinary precedent, the OAE further observed that attorneys disciplined for the commission of crimes involving false statements in the procurement of loans typically have received lengthy suspensions, although the level of discipline has varied based on the seriousness of the offense. In support, the OAE cited In re Serrano, 193 N.J. 24 (2007) (eighteen-month retroactive suspension for an attorney who pleaded guilty to making a false statement to a federal agency, in violation of 18 U.S.C. §§ 1001 and 2); In re Mederos, 191 N.J. 85 (2002) (eighteen-month retroactive suspension for an attorney convicted of conspiracy to commit mail fraud, in violation of 18 U.S.C. § 371); In re Kofman, __ N.J. __ (2022), 2022 N.J. LEXIS 1161 (two-year retroactive suspension for an attorney who pleaded guilty to conspiracy to make false statements to lenders, in violation of 18 U.S.C. § 371); In re Panepinto,

157 N.J. 458 (1999) (two-year retroactive suspension for an attorney who pleaded guilty to conspiracy to commit bank fraud, in violation of 18 U.S.C. § 371); In re Noce, 179 N.J. 531 (2004) (three-year retroactive suspension for an attorney who pleaded guilty to conspiracy to commit mail fraud, in violation of 18 U.S.C. § 371)).

The OAE pointed out that factors affecting the level of discipline have included the amount of loss to the victims; the attorney's actions in perpetrating the fraud; the sentence imposed, including the length of any period of incarceration and the amount of any restitution ordered; the attorney's level of cooperation with the government; and whether the attorney took responsibility for the crime.

Applying these factors, the OAE observed that respondent knowingly participated in a scheme that caused FSB to lose $715,000 through its payment of the finder's fee. Respondent's significant cooperation with the government, during a period of more than six years, resulted in the government's recommendation of a downward departure at her sentencing, and she received a sentence of time served, no supervised release, a fine of $25,000, the $25,000 judgment that she already had paid, and a $200 assessment. Finally, the OAE observed that, although Judge McNulty recognized that respondent's fraudulent behavior constituted a serious offense, that offense was not "as serious" as it had

appeared when respondent entered her guilty plea. Instead, the OAE asserted, "it is the seriousness of [r]espondent's conduct as an attorney that warrants a lengthy suspension."

In mitigation, the OAE emphasized the length of time that had passed between respondent's conviction and the filing of the ethics charges – a delay solely attributable to her "cooperation with the government's investigation and the prosecution of the more culpable co-conspirators prior to her sentencing." The OAE also highlighted her prompt notification of the OAE regarding her conviction; her more than thirty-year career at the bar with no prior discipline; her acceptance of responsibility and expression of remorse, evidenced by her pleading guilty; and the court's conclusion that she was highly unlikely to reoffend.

Based on the above, the OAE urged the imposition of a two- or three-year retroactive suspension.

In her written submission to us and during oral argument, respondent, through counsel, concurred with the OAE's recommendation. Arguing against the imposition of harsher discipline, she highlighted that, during the sentencing proceeding, both Judge McNulty and the prosecution acknowledged that the case "was not quite as serious as it originally looked when [respondent] entered her plea agreement" and, further, that she did not benefit financially from the

underlying misconduct. Moreover, she emphasized the court's observation that ethical lines had become "blurred" while she acted in her capacity as counsel to FSB. In addition, she asserted that she accepted responsibility for her misconduct, showed remorse, and was deemed by Judge McNulty to present a chance of reoffending "as close to zero as [the court] could imagine."

Addressing disciplinary precedent in support of a two- or three-year retroactive suspension, respondent placed particular emphasis on In re Choi, 239 N.J. 68 (2019), a case that addressed money laundering. She asserted that, like the attorney in Choi, who received a two-year retroactive suspension, she had "extremely limited involvement" in the scheme at issue here; did not receive any financial benefit from the criminal wrongdoing; and, although the Firm received a retainer from FSB, she personally had paid this sum back in full. Further, she highlighted that, like the attorney in Choi, she timely and extensively cooperated with the government and also enjoyed a decades-long career without prior disciplinary incident. She argued, however, that the attorney in Choi engaged in more reprehensible conduct, because she "did not lie to federal law enforcement in an attempt to conceal her conduct."

Respondent also argued that her misconduct "[was] far less egregious" than that of the attorney in In re Demetrakis, 250 N.J. 514 (2022), who received the equivalent of a one-year suspension. She highlighted that, in that case, the

attorney received a portion of the fraudulently obtained bank loans for his own use, put his children at risk of criminal charges by involving them in the scheme, and failed to inform the OAE of his criminal charges, as required by R. 1:20-13(a)(1). She compared the role of the attorney in Demetrakis, who "was intimately aware of the purpose of the nominee loans as he was a direct participant in receiving those loan proceeds," with her own purportedly "tangential[] involve[ment]" in the misconduct at issue.

Moreover, in arguing for the imposition of a retroactive suspension, respondent likened her minor role in the criminal scheme to that of the attorneys in Mederos, 191 N.J. at 85, and In re Jimenez, 187 N.J. 86 (2006), each of whom received an eighteen-month retroactive suspension for playing a minor role in a mortgage fraud scheme.

Other mitigating factors set forth by respondent, in addition to those mentioned above, included the passage of more than six years since her temporary suspension took effect, her cooperation with the government while she awaited sentencing, her compliance with the R. 1:20-20 affidavit requirement in connection with her temporary suspension, and the character letters submitted on her behalf, including letters from former clients who expressed their eagerness to work with her again.

Respondent submitted to us ten character letters – authored by clients, colleagues, friends, family members, and one of her prior attorneys in the criminal matter – praising her character and integrity, setting forth former clients' desire to resume working with her, and attesting to her exemplary work, expertise, and qualities as an attorney, colleague, friend, and parent.

Respondent also submitted a November 13, 2020 letter from the federal prosecutor to Judge McNulty, apprising the court that the United States "intended to move to strike from the Indictment the second object of the conspiracy . . . and proceed to trial solely on the charge that the co-conspirators conspired to violate 18 U.S.C. § 1005."[4] Respondent asserted that the letter demonstrated that the government "abandoned the alleged conspiracy counts" against CC Two, CC Three, and CC Four – "the same conspiracy to which [respondent] had already pled guilty" – cross-referencing remarks made at the sentencing proceeding, when the court had noted "changes or deterioration in the evidence" pertaining to her co-conspirators. However, she failed to account for the government's determination to "proceed to trial solely on the charge that the co-conspirators conspired to violate" 18 U.S.C. § 1005 (emphasis added) –

[4] Subsequently, the government successfully moved to strike the charge and underlying factual allegations pertaining to "a counterfeit CPA letter and Vanderbilt brokerage account statement, allegedly used to deceive the FDIC," regarding purported assets that allegedly factored into the issuance of the insurance policies for the FSB Loans. United States v. Natale, 2021 U.S. Dist. LEXIS 90890 (D.N.J. May 12, 2021) at *19-23.

the prosecution of which ultimately resulted in CC Two's and CC Four's convictions and receipt of the probationary sentences that the court later weighed in sentencing respondent.[5]

Analysis and Discipline

Violations of the Rules of Professional Conduct

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

Respondent's guilty plea and conviction of making false entries to deceive the FDIC and FSB, and of conspiracy to deceive the FDIC and FSB and to influence the FDIC, thus, establishes her 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." Moreover, respondent's criminal conduct, which constituted fraud, violated RPC 8.4(c).

[5] Although CC Three was indicted, the current status or outcome of that indictment is not clear from the record and publicly available documents.

In sum, we find that respondent violated RPC 8.4(b) and RPC 8.4(c). Hence, the sole issue left for our determination is the extent of discipline to be imposed. R. 1:20-13(c)(2); Magid, 139 N.J. at 451-52; Principato, 139 N.J. at 460.

Quantum of Discipline

In determining the appropriate measure of discipline, we must consider the interests of the public, the bar, and respondent. "The primary purpose of discipline is not to punish the attorney but to preserve the confidence of the public in the bar." Principato, 139 N.J. at 460. 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, . . . prior trustworthy conduct, and general good conduct." In re Lunetta, 118 N.J. 443, 445-46 (1989).

The Court has noted that, although it does not conduct "an independent examination of the underlying facts to ascertain guilt," it will "consider them relevant to the nature and extent of discipline to be imposed." Magid, 139 N.J. at 452. In motions for final discipline, it is acceptable to "examine the totality of the circumstances, including the details of the offense, the background of respondent, and the pre-sentence report," before reaching a decision as to the

sanction to be imposed. In re Spina, 121 N.J. 378, 389 (1990). The "appropriate decision" should provide "due consideration to the interests of the attorney involved and to the protection of the public." Ibid.

The quantum of discipline for an attorney convicted of a serious criminal offense ranges from a term of suspension to disbarment. See In re Mueller, 218 N.J. 3 (2014) (three-year suspension for an attorney who pleaded guilty to conspiracy to commit wire fraud, in violation of 18 U.S.C. § 1349), and Goldberg, 142 N.J. at 557 (disbarment for an attorney who pleaded guilty, in separate jurisdictions, to three counts of mail fraud, in violation of 18 U.S.C. §§ 1341 and 1343, and conspiracy to defraud the United States, in violation of 18 U.S.C. § 371).

In Goldberg, the Court made clear that "[c]riminal convictions for conspiracy to commit a variety of crimes, such as bribery and official misconduct, as well as an assortment of crimes related to theft by deception and fraud, ordinarily result in disbarment." 142 N.J. at 567. More specifically, the Court explained that "when a criminal conspiracy evidences 'continuing and prolonged, rather than episodic, involvement in crime,' is 'motivated by personal greed,' and involved the use of the lawyers' skills 'to assist in the engineering of the criminal scheme,' the offense merits disbarment." Id. (quoting In re Goldberg, 105 N.J. 278, 283 (1987). Because "such conspiracies

pose a 'direct threat to society,'" disbarment becomes mandatory "'to preserve the integrity of the bar.'" Id. (quoting Goldberg, 105 N.J. at 283).

However, also applying the Goldberg factors, terms of suspension have been imposed on attorneys who have committed less egregious crimes. Other important considerations include the amount of loss, if any, to the victims; the nature of the actions taken by the attorney to perpetrate the fraud; whether the attorney took responsibility for the crime; the attorney's cooperation with and assistance to the government's investigation and prosecution; and, where relevant and applicable, the sentence imposed.

Here, in assessing whether respondent's criminal misconduct warrants disbarment, Choi provides a helpful examination of factors that mitigate against disbarment. In that case, the Court imposed a two-year retroactive suspension for an attorney who pleaded guilty to one count of conspiracy to commit money laundering, in violation of 18 U.S.C. § 1956, and one count of knowingly and willfully making a materially false, fictitious, or fraudulent statement or representation to Homeland Security Investigations, an arm of the United States Department of Homeland Security, in violation of 18 U.S.C. § 1001(a)(2). In the Matter of Yohan Choi, DRB 18-234 (December 28, 2018) at 1-2, so ordered, 239 N.J. 68 (2019).

In determining not to recommend Choi's disbarment and, instead, recommending a two-year retroactive suspension, we considered that Choi received no prison time and was not required to pay restitution; cooperated with the government's investigation and substantially assisted in the prosecution of the criminal enterprise; had no disciplinary record; accepted responsibility for his criminal conduct; and expressed remorse. Id. at 17-18. In addition, Choi's misconduct was limited in time (occurring during a four- to five-month period) and scope (involving no more than $35,000 in payments to shell corporations). Id. at 17. Moreover, he did not act as a ringleader in the money-laundering scheme, and the record did not reflect that he benefitted financially from the scheme, aside from receiving referrals. Id. at 17-18.

In our view, here, as in Choi, respondent's misconduct, although serious, does not mandate disbarment. She played a limited role in the criminal conspiracy, whereas her co-conspirators, CC Two and CC Three, apparently took the lead. She engaged in the misconduct described in the Information and plea allocution during a relatively limited period, from approximately September 2009 to August 2010. She did not profit financially from the scheme, beyond her Firm's fee. Finally, she took responsibility for her criminal conduct and assisted in the government's criminal investigation and prosecution, albeit only after initially taking part in concealing information sought by the FDIC.

To date, we only once have addressed an attorney's conviction for conspiracy to make false entries to deceive a financial institution and the FDIC. Demetrakis, 250 N.J. 514. In that matter, the attorney pleaded guilty to one count of conspiracy to violate 18 U.S.C. § 1005, contrary to 18 U.S.C. § 371, after he and a co-conspirator defrauded a bank and the FDIC to secure two loans, totaling more than $4 million dollars, for their own benefit. In the Matter of James D. Demetrakis, DRB 20-316 (August 6, 2021) at 1, 3.

More specifically, the attorney's co-conspirator – a long-time friend whom the attorney treated like a son – was the founder and member of the Board of Directors of a bank and, accordingly, could not receive a loan from the bank. Id. at 4. To circumvent this prohibition, the co-conspirator recruited the attorney and the attorney's children to act as nominee borrowers to secure two loans. Id. at 4-5. For the first loan, the attorney himself acted as putative borrower, with the loan proceeds going to his co-conspirator. Ibid. For the second loan, procured less than a year later, the attorney had reached his lending limit at the bank, and so he recruited two of his children to act as nominees; however, the proceeds went to the attorney and his co-conspirator. Id. at 5. The loans were repaid in full, and the bank suffered no financial loss. Id. at 8.

The Court imposed the equivalent of a one-year suspension for the attorney's criminal misconduct.[6] Demetrakis, 240 N.J. at 514-15. In recommending this quantum of discipline, we likened the matter to In re Alum, 162 N.J. 313 (2000), and Serrano, 193 N.J. at 24. In the Matter of James D. Demetrakis, DRB 20-316, at 12-14, 16, 24-25.

In Alum, the Court imposed a one-year suspension (suspended, due to the passage of time since the attorney's misconduct, his long unblemished legal career, and his community service) where the attorney fraudulently procured secondary financing for borrowers in five real estate transactions, in which he represented either the buyer or the seller. In the Matter of Luis A. Alum, DRB 98-277 (April 5, 1999) at 15. In some of the transactions, Alum permitted the purchase price of the property to be inflated to obtain one-hundred percent financing, and then created fictional repair credits that reflected a discount on the sale price. Id. at 4-5. In several of the transactions, the buyer's loan exceeded the full purchase price of the property, and the buyer walked away from the transaction with cash. Id. at 6-7. In other transactions, the buyer obtained a second mortgage loan that was not disclosed to the primary mortgage lender. Id.

[6] Because the attorney had resigned without prejudice some years earlier, the Court imposed a one-year prohibition on "apply[ing] for readmission to the bar of this State in any manner for a period of one year, and until the further Order of the Court," as well as on "be[ing] admitted pro hac vice or in any other manner in any New Jersey proceeding." Demetrakis, 250 N.J. at 514-15.

at 4-7. Alum was not charged with any crimes as a result of his misconduct. Id. at 3

In Serrano, the Court imposed an eighteen-month retroactive suspension where the attorney knowingly prepared materially false HUD-1 forms to obtain HUD-insured mortgages for unqualified borrowers. In the Matter of Linda M. Serrano, DRB 07-061 (June 29, 2007) at 2-4. Specifically, the HUD-1 forms misrepresented that the borrowers had provided Serrano with funds, such as closing costs, at settlement. Id. at 5-7. Serrano received between $20,000 and $40,000, which she claimed were her legal fees, for her illegal conduct in approximately twenty-five closings. Id. at 7, 9.

In likening Demetrakis's misconduct to that of the attorneys in Alum and Serrano, we noted that Alum fraudulently secured surplus funds for borrowers; similarly, Demetrakis illegally secured loans for his co-conspirator. Id. at 24-25. Moreover, Alum displayed candor and had an unblemished ethics history in the ten years between his misconduct and the ethics proceeding, while Demetrakis admitted his guilt and had no ethics history in more than fifty years at the bar. Id. at 25. Further, we found that, like the attorney in Serrano, Demetrakis took responsibility for his crimes, was sentenced to probation, and was not ordered to pay restitution. Ibid. However, we noted that, unlike the misconduct

committed by the attorneys in Serrano and Alum, Demetrakis's crimes resulted in no financial loss to any party. Ibid.

In aggravation, we weighed that the two illegal loans at issue in Demetrakis totaled more than $4 million; Demetrakis benefitted from the proceeds of the second loan; he failed to report his criminal charges and conviction to the OAE; and, although he was not acting in his capacity as a lawyer when he engaged in the fraud, he nevertheless "had a heightened awareness of the illegality of his conduct, given his experience as an attorney and real estate developer." Id. at 8, 25.

In mitigation, we weighed that the bank suffered no financial harm and that Demetrakis had no prior discipline in more than fifty years at the bar; served in the military; performed community service; expressed genuine remorse; accepted responsibility for his misconduct; and had resigned from the bar by the time the matter came before us. Id. at 25.

Here, like the attorney in Demetrakis, respondent conspired in the fraudulent procurement of a loan through the use of a sham nominee. Although the attorney in Demetrakis fraudulently facilitated the procurement of two bank loans, respondent pleaded guilty to direct involvement in procuring only one; however, unlike the attorney in Demetrakis, she also took part in the creation and execution of an illegal subscription agreement for a nominee's purported

stock purchase and, further, she sought to conceal information from her client and a federal agency regarding a purported capital investment and fraudulent loans.

More egregiously, whereas the attorney in Demetrakis did not use his role as an attorney to facilitate the criminal scheme, respondent acted in her role as FSB's counsel when she facilitated fraud against her client and the FDIC. That she did not use any of the loan proceeds (unlike the attorney in Demetrakis, who benefitted from one of the loans), pales in comparison to the harm caused her client by payment of the $715,000 finder's fee – harm she allowed to go unchecked when she failed to alert FSB to the fact that CC Three had not "found" the Nominee Entities, and in particular, the Nominee 1 LLC, for which respondent herself engineered the fraudulent subscription.

To be sure, respondent was less criminally culpable than at least two of her co-conspirators. However, the issue is not how badly she conducted herself relative to two other, non-attorney conspirators, but rather her own, grossly unethical conduct as an attorney. In comparison to the criminal conduct at issue in Demetrakis, Serrano, and Alum, respondent's conduct directly implicated the disciplinary aim of protecting the public, as her fraudulent activities were designed to prop up and conceal the shaky financial footing of a bank on the verge of failing. As outside counsel with expertise in the financial industry, she

had unique opportunities to provide sound legal guidance to a client in crisis. Instead, she failed to safeguard FSB and the public it served.

In addition, even when FSB's third-party auditors sought to ascertain the status of the $12 million in FSB funds that the bank had sent to CC Three to enhance its investments, and even after respondent learned that CC Three had misused FSB's own funds for a margin loan to create the purported "capital infusion," respondent failed to put an end to her own involvement in, let alone try to curb, the scheme. To the contrary, she joined in the scheme's expansion to its second phase, in which FSB made more than $7 million in loans to the sham Nominee 1 and Nominee 2 LLCs, as well as to CC Three, who already had put FSB's finances at risk. Finally, when FSB sought to provide information to the FDIC to address the agency's specific inquiries into the Nominee 1 LLC's funds and the FSB Loans, respondent again failed to withdraw from the scheme. Instead, she knowingly interfered with FSB's efforts to respond accurately to the FDIC's inquiries.

Thus, in our view, respondent's misconduct warrants more significant discipline than the one-year suspension imposed in Demetrakis.

In crafting the appropriate quantum of discipline, we also consider aggravating and mitigating factors.

In aggravation, respondent's criminal activity was directly related to her practice of law. See In the Matter of Eric Alan Klein, DRB 17-039 (July 21, 2017) at 26 (weighing, in aggravation, that the attorney leveraged his status as an attorney to provide a veneer of respectability and legality to the criminal scheme). Respondent acted in her capacity as FSB's attorney when she deceived and enabled others to deceive FSB and the FDIC. Moreover, she continued to do so even when the scheme expanded to include additional misrepresentations or omissions, undertaken to prevent FSB's and the FDIC's detection of the initial fraud. Although respondent did not take funds from FSB as part of the scheme, and other co-conspirators played more significant roles, she actively took part in a scheme that caused her client a $715,000 loss.

In mitigation, respondent's ethics matter proceeded for more than six years after she reported her conviction to the OAE, owing to the delay in sentencing occasioned by her cooperation with the government's prosecution of her more culpable co-conspirators. See In re Davis, 230 N.J. 385 (2017). Further, she assisted the government in its investigation, albeit apparently only after FSB (and then the FDIC, as receiver) pursued a civil suit against her in connection with the same scheme.

In further mitigation, prior to her temporary suspension in 2017, respondent had an unblemished legal career since her admission to the New

Jersey bar in 1986, a factor we and the Court typically accord significant weight. In re Convery, 166 N.J. 298, 308 (2001).

Further, there is no evidence that greed motivated respondent's behavior, and she did not personally profit from the scheme, beyond her Firm's receipt of its fee from FSB (which she has since forfeited, pursuant to her sentence). As found by Judge McNulty, she presents little likelihood of repeating her misconduct. See In the Matter of Robert L. Garibaldi, Jr., DRB 21-187 (February 14, 2022) at 18 (weighing, in mitigation, that the attorney's misconduct "appear[ed] unlikely to recur"). She also accepted responsibility for her criminal conduct, although in her written submission to us, she minimized portions of her plea allocution.

Conclusion

On balance, in light of the magnitude of the harm to the client, respondent's misuse of her role as FSB's attorney in connection with the conspiracy, and her continued participation at each juncture in the conspiracy's three distinct phases, we determine that a three-year suspension is the quantum of discipline necessary to protect the public and preserve confidence in the bar.

Because respondent was temporarily suspended in connection with her misconduct underlying this matter, we also recommend that her three-year

suspension be imposed retroactive to June 6, 2017, the date of her temporary suspension. See In re Dutt, 250 N.J. 181 (2022), and In re Walker, 234 N.J. 164 (2018) (the attorneys' respective terms of suspension were imposed retroactive to the effective dates of their temporary suspensions in connection with their criminal conduct).

Member Hoberman was absent.

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
Hon. Mary Catherine Cuff, P.J.A.D. (Ret.),
Chair

By: */s/ Timothy M. Ellis*
Timothy M. Ellis
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Donna Marie Conroy
Docket No. DRB 24-124

Argued: July 25, 2024

Decided: November 12, 2024

Disposition: Three-year suspension

Members	Three-year suspension	Absent
Cuff	X	
Boyer	X	
Campelo	X	
Hoberman		X
Menaker	X	
Petrou	X	
Rivera	X	
Rodriguez	X	
Spencer	X	
Total:	8	1

/s/ Timothy M. Ellis
Timothy M. Ellis
Chief Counsel