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Video Course Evaluation Form

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Please Circle the Appropriate Answer

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Required: When you hear the bell sound, write down the secret word that appears on your screen on this form.

Word #1 was: _____ Word #2 was: _____

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What did you like most about the seminar?

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I Certify that I watched, in its entirety, the above-listed CLE Course

Signature _____ Date _____

Garden State CLE Presents:

Common Ethical Issues in Municipal Court

Lesson Plan

Table of Contents

I. Dismissal of Charges

a. 7:8-5. Dismissal

If the complaint is not moved on the day for trial, the court may direct that it be heard on a specified return date and a notice thereof be served on the complaining witness, all defendants and all other known witnesses. If the complaint is not moved on that date, the court may order the complaint dismissed. A complaint may also be dismissed by the court for good cause at any time on its own motion, on the motion of the State, county or municipality or on defendant's motion. On dismissal, any warrant issued shall be recalled, and the matter shall not be reopened on the same complaint except to correct a manifest injustice.

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b. GUIDELINE 3. PROSECUTOR'S RESPONSIBILITIES

Nothing in these Guidelines should be construed to affect in any way the prosecutor's discretion in any case to move unilaterally for an amendment to the original charge or a dismissal of the charges pending against a defendant if the prosecutor determines and personally represents on the record the reasons in support of the motion.

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c. New Jersey Supreme Court Comment –

Plea agreements are to be distinguished from the discretion of a prosecutor to charge or unilaterally move to dismiss, amend or otherwise dispose of a matter. It is recognized that it is not the municipal prosecutor's function merely to seek convictions in all cases. The prosecutor is not an ordinary advocate. Rather, the prosecutor has an obligation to defendants, the State and the public to see that justice [be] done and truth [be] revealed in each individual case. The goal should be to achieve individual justice in individual cases. In discharging the diverse responsibilities of that office, a prosecutor must have some latitude to exercise the prosecutorial discretion demanded of that position. It is well established, for example, that a prosecutor should not prosecute when the evidence does not support the State's charges. Further, the prosecutor should have the ability to amend the charges to conform to the proofs.

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d. RPC 3.8. Special Responsibilities of a Prosecutor

The prosecutor in a criminal case shall:

- **(a)** refrain from prosecuting a charge that the prosecutor knows is not supported by probable cause;

OPINION 565 (1985)

Requiring Release of Civil
Claims as Prerequisite for
Dismissal of Municipal Court Complaint

The law firm represents a corporation providing security guard services to a governmental authority under the terms of a public contract. In connection therewith, it represents guards in municipal court who are the subject of criminal complaints.

Typically, these complaints take the form of allegations of simple assault. Additionally, each case often involves a cross complaint by the guard against the other party, also in the nature of simple assault.

All complaints that are filed by the guard or the other party are done so at their own initiative and prior to the law firm's involvement. The firm does not suggest, counsel or initiate the filing of any complaints or cross complaints, but, rather, is contacted by the guard service to represent the guards after the complaints have been signed and the summons issued.

Frequently, at the time that the matter reaches trial, the emotions of the parties have dissipated and settlement by mutual dismissal of the cross complaints is acceptable to both parties. In circumstances where the adversaries approach the law firm regarding the possibility of such a settlement, it has been the policy of that office, as per the directives of its client, to require an exchange of releases by the parties prior to dismissal of the complaints. An appropriate release is executed by the security guard involved running in favor of the other party and the party executes a release running in favor of the guard, the corporation employing the guard, and the governmental authority for whom the services were rendered.

The inquiry presented to the Committee is whether it is a violation of ethical prohibitions to require the execution of a general release in favor of the guard, the guard service and the governmental authority as a prerequisite to the mutual dismissal of claims in a criminal matter.

We find no ethical violation based on the stated facts. There is no specific rule of Professional Conduct which covers the subject matter. We are not dealing with a situation in which a lawyer participates in, or threatens to present criminal charges to obtain an improper advantage in a civil matter. The prior Code of Professional Responsibility, Rule 7-105(A) entitled "Threatening Criminal Prosecution" provided as follows:

A lawyer shall not present, participate in presenting, or threaten to present criminal charges to obtain an improper advantage in a civil matter.

In the case now before us, the criminal complaint was filed against a guard who filed a cross complaint. No civil actions were filed by either party.

If the original complainant (who was at all time free to continue his criminal complaint and retain all his rights pertaining to civil suits), desired to effect a mutual dismissal of the "cross complaints", it was his privilege to suggest it, but the cross complainant, having been required to defend against the complaint did nothing wrong in requesting that in addition to an exchange of releases between the complainants, the original complainant must also deliver releases for civil suits in favor of the guard service, and the governmental authority.

For the reasons expressed, we conclude that there is no ethical violation.

OPINION 661 (1992)

Municipal Prosecutor Conditioning Plea Bargain Upon Defendant's Execution of Civil Release Form

The inquirer asks whether it is ethical for a municipal prosecutor to require, as a condition precedent to a plea bargain, that a defendant in a criminal, quasi-criminal or motor vehicle matter sign a form in which the defendant agrees that there existed probable cause to arrest, that no excessive force was used in effectuating the arrest, and that any right to sue the arresting officer for a violation of civil rights is waived. Specifically, in order to have a plea bargain accepted, any defendant must answer the following questions - which are on the plea bargaining form - affirmatively:

Do you agree that the police officer(s) who arrested you and detained you had probable cause to arrest you and to charge you with all of the offenses listed in response to question one?

Do you acknowledge that the police officer(s) who arrested you exercised only the force that was reasonable and necessary to arrest you?

Do you realize that by signing this document you are giving up the right to sue the police officer who arrested you, any police officer involved in the arrest and the City of based upon any of the circumstances surrounding your arrest, the filing of the charges and your detention?

In the factual context recited by the inquirer, the prosecutor demanded affirmative responses to these three questions in a situation in which probable cause did not exist. When there is no probable cause, the introduction of RPC 3.8(a) unequivocally applies:

The prosecutor in a criminal case shall: (a) refrain from prosecuting a charge that the prosecutor knows is not supported by probable cause[.]

Requiring a defendant to acknowledge the existence of probable cause in no way vitiates the obligation of the prosecutor not to prosecute when probable cause does not exist. That duty is absolute and unconditional. A defendant's uninformed - or informed - view on probable cause cannot relieve the prosecutor of the duty to assure that probable cause is present. Even if there exists probable cause in the subjective opinion of the prosecutor, it is improper for the prosecutor to insist upon a defendant's acknowledgment of the existence of probable cause. A defendant's acknowledgment of the existence of probable cause is irrelevant to both the purpose and the propriety of a plea bargain. The true purpose for such a question can only be to enhance law enforcement's position unfairly or to relieve the prosecutor improperly of the obligation to ascertain the existence of probable cause. Requiring an affirmative answer to this first question is thus improper. The issues of whether it is proper for a prosecutor to demand an acknowledgment that excessive force was not used and to require waiver or release of civil rights claims are separate and distinct from the issue of waiving probable cause. We start with the well- established obligation of the prosecutor: The primary duty of a prosecutor is not to obtain convictions but to see that justice is done. *State v. Farrell*, 61 *N.J.* 99, 104 (1972). Thus, "[I]t is as much his duty to refrain from improper methods calculated to produce a wrongful conviction as it is to use every legitimate means to bring about a just one.

RPC 3.8 expands upon a prosecutor's "Special Responsibilities" and details certain active steps a prosecutor must take to ensure fair treatment of defendants. In the spirit of RPC 3.8, we note that neither fairness nor logic dictates that a defendant should be bound by his untutored perception of whether "reasonable and necessary force" was used, as this form requires. Just as in the case of requiring acknowledgment of probable cause, asking a defendant to acknowledge affirmatively the existence of the legally ephemeral concept of "reasonable and necessary force" is the antithesis of insuring that justice is done and it is a default of the State's affirmative obligation. A prosecutor thus may not demand an affirmative answer to this question as a precondition to a plea bargain.

The required waiver of civil rights requires analysis under an additional rule. RPC 3.4(g) mandates that a lawyer shall not "present, participate in presenting, or threaten to present criminal charges to obtain an improper advantage in a civil matter." In the situation presented, the defendant was in court under threat of quasi-criminal charges for which no probable cause existed. Because probable cause was absent, proceeding with trial would have been a violation of the prosecutor's obligation under RPC 3.8(a). Despite this lack of probable cause, and attendant possible violation of RPC 3.8(a), trial was to be held unless certain substantive rights were waived. The element of *quid pro quo* forbidden by RPC 3.4(g) is present: unless the defendant waived certain of his constitutional and civil rights (a clear civil advantage to both the police officers and the municipality involved), he would be prosecuted in violation of RPC 3.8(a). We hasten to acknowledge the tension created by these three conditions precedent as they relate to the question of voluntariness of the plea. It may be that requiring affirmative answers to these questions is also inherently coercive, in addition to being unethical. We are not reaching that issue, because we perceive that the practice described here is unethical, as opposed to illegal.

RPC 3.4. Fairness to Opposing Party and Counsel

A lawyer shall not:

- **(g)** present, participate in presenting, or threaten to present criminal charges to obtain an improper advantage in a civil matter.

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OPINION 714

Conditioning Entry of a Plea or Entry into Pretrial Intervention on Defendant's Release from Civil Liability and Hold-Harmless Agreement

Accordingly, in response to the inquiry, the Committee confirms that *RPC* 3.4(g) prohibits a prosecutor from conditioning entry of a plea or entry into pretrial intervention in a criminal, quasi-criminal, or motor vehicle matter on the defendant's release from civil liability and agreement to hold harmless any person or entity such as the police, the prosecutor, or a governmental entity. The prohibition applies in all situations, including when the defendant's release from liability and agreement to hold harmless is initially offered by defense counsel.

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OPINION 721

Agreement as Condition of Settlement That Client Refrain From Filing an Attorney Ethics Grievance or Withdraw a Grievance Already Filed

[A]n attorney may not seek or agree, as a condition of settlement of an underlying dispute, that the client not file an ethics grievance with regard to conduct of the attorney in the matter or withdraw a grievance already filed. Such an agreement is prejudicial to the administration of justice and, accordingly, violates *Rule of Professional Conduct* 8.4(d).

II. Failure to Appear

RPC 1.1 Competence

A lawyer shall not:

- **(a)** Handle or neglect a matter entrusted to the lawyer in such manner that the lawyer's conduct constitutes gross negligence.
- **(b)** Exhibit a pattern of negligence or neglect in the lawyer's handling of legal matters generally.
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RPC 1.3. Diligence

A lawyer shall act with reasonable diligence and promptness in representing a client.

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RPC 8.4. Misconduct

It is professional misconduct for a lawyer to:

- **(a)** violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;
- **(b)** commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;
- **(c)** engage in conduct involving dishonesty, fraud, deceit or misrepresentation;
- **(d)** engage in conduct that is prejudicial to the administration of justice;

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1:2-4. Sanctions: Failure to Appear; Motions and Briefs

- **(a) Failure to Appear.** If without just excuse or because of failure to give reasonable attention to the matter, no appearance is made on behalf of a party on the call of a calendar, on the return of a motion, at a pretrial conference, settlement conference, or any other proceeding scheduled by the court, or on the day of trial, or if an application is made for an adjournment, the court may order any one or more of the following: (a) the payment by the delinquent attorney or party or by the party applying for the adjournment of costs, in such amount as the court shall fix, to the Clerk of the Court made payable to "Treasurer, State of New Jersey," or to the adverse party; (b) the payment by the delinquent attorney or party or the party applying for the adjournment of the reasonable expenses, including attorney's fees, to the aggrieved party; (c) the dismissal of the complaint, cross-claim, counterclaim or motion, or the striking of the answer and the entry of judgment by default, or the granting of the motion; or (d) such other action as it deems appropriate.

In re D'Arienzo, 207 NJ 31 (2011) (Censure)

See also In re D'Arienzo, 157 NJ 32 (1999) (Three-month suspension for lying RPC 3.3(a)(1) false statement of law or fact to tribunal)

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[R]espondent exercised poor judgment in the management of his calendar. By scheduling more than one matter for September 11, 2008, he inconvenienced the court, the complaining witness, and two defendants. prosecutor, the In addition, his failure to provide the court with advance notice of his conflicting calendar prevented the judge from scheduling other cases for that date. Respondent's conduct, thus, was prejudicial to the administration of justice, a violation of RPC 8.4(d).

(Also 8.4(d) violation for FTA at Order to Show Cause)

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[A]n Order to Show Cause issued by this Court is neither a suggestion nor an invitation that an attorney is privileged to accept or reject as he or she wishes. Rather, it is an Order to appear with which a respondent's compliance is required. Absent some significant and compelling excuse for a failure to appear in response to our Order, we will consider such a failure to be a serious matter to be evaluated as a part of the record on which an appropriate penalty will be imposed; and we may, on that basis alone, as we have here, further enhance the resulting penalty accordingly.

In re Kivler, 193 NJ 332, 343-44 (2008)

See In re Yengo, 84 NJ 111 (1980); State v. Quintana, 270 NJ Super. 676 (App. Div. 1994) (FTA is normally not a contempt in the face of the court)
In re Lynch, 369 NJ Super. 93, 102 (App. Div. 2004)

We fully understand the tension resulting from the frustration of trial judges who must move their calendars and, on the other hand, the demanding schedules of overworked public defenders and prosecutors who, under present circumstances, often cannot avoid conflicting obligations. They are all under strain and pressure. We do not believe, however, that that tension can be productively resolved by peremptory ultimata from the court and sanctions imposed on lawyers who are trying to do their jobs in difficult situations. It behooves all participants in the court system, and particularly the judges and lawyers, to understand that they are not adversaries and to cooperate in attempting to reach their mutual objective of advancing the work of the criminal justice system.

III. Candor before the Tribunal

RPC 3.3. Candor Toward the Tribunal

- **(a)** A lawyer shall not knowingly:
  (1) make a false statement of material fact or law to a tribunal;
  (2) fail to disclose a material fact to a tribunal when disclosure is necessary to avoid assisting an illegal, criminal or fraudulent act by the client;
  (3) fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel;
  (4) offer evidence that the lawyer knows to be false. If a lawyer has offered material evidence and comes to know of its falsity, the lawyer shall take reasonable remedial measures; or
  (5) fail to disclose to the tribunal a material fact knowing that the omission is reasonably certain to mislead the tribunal, except that it shall not be a breach of this rule if the disclosure is protected by a recognized privilege or is otherwise prohibited by law.
- **(b)** The duties stated in paragraph (a) continue to the conclusion of the proceeding, and apply even if compliance requires disclosure of information otherwise protected by RPC 1.6.
- **(c)** A lawyer may refuse to offer evidence that the lawyer reasonably believes is false.
- **(d)** In an ex parte proceeding, a lawyer shall inform the tribunal of all relevant facts known to the lawyer that should be disclosed to permit the tribunal to make an informed decision, whether or not the facts are adverse.

Client Identity – State v. Rondinone, 300 NJ Super. 495 (App. Div. 1997)

State v. Sirvent, 296 NJ Super. 279 (App. Div. 1997)

17 NJ Prac s 35:11

A given police officer may perform dozens of traffic stops each month. The traffic tickets issued as a result of these motor vehicle stops may not be scheduled for court for many weeks or months after the interaction between the officer and the driver. Accordingly, it is not unusual for police officer to be unable to identify a particular defendant as the driver of the vehicle to whom the officer issued a traffic summons. New Jersey law does not require that the identity of a motor vehicle operator be proven to a formal certitude.[FN1] A trial court may infer that the person who presented a driver's license to the officer at the time of the motor vehicle stop is the defendant in court.[FN2] Moreover, the court may also infer that the defendant who is present in court at the start of trial is both the person named in the complaint and the person who was apprehended by the police.[FN3]
As is the case with all inferences, the defendant may introduce evidence tending to rebut the issue of identity by showing that some other person was, in fact, the operator of the vehicle. However, the burden of production on this issue falls squarely on the defendant.

[FN1] State v. Bucich, 134 N.J. Super. 111, 115, 338 A.2d 827, 828 (App. Div. 1975).
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[FN2] State v. Bucich, 134 N.J. Super. 111, 115, 338 A.2d 827, 828 (App. Div. 1975).
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[FN3] State v. Russell, 135 N.J. Super. 154, 157–158, 342 A.2d 884, 885–886 (County Ct. 1975), opinion affirmed by 137 N.J. Super. 219, 348 A.2d 797 (App.Div.1975).
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[Note in the following instances how the most trivial cases quickly spin out of control based upon lack of candor.]

In re Santiago, 175 NJ 499 (2003) (Three-month suspension)

In re Kornreich, 149 NJ 346 (1997) (Three-year suspension)

In re Whitmore, 117 NJ 472 (1990) (Reprimand – municipal prosecutor)

In re Norton, 128 NJ 520 (1992) (Three-month suspension)

In re Kress, 128 NJ 520 (1992) (Three-month suspension)

Confidentiality of Information

RPC 1.6. Confidentiality of Information

- **(a)** A lawyer shall not reveal information relating to representation of a client unless the client consents after consultation, except for disclosures that are impliedly authorized in order to carry out the representation, and except as stated in paragraphs (b), (c), and (d).
- **(b)** A lawyer shall reveal such information to the proper authorities, as soon as, and to the extent the lawyer reasonably believes necessary, to prevent the client or another person:

  (1) from committing a criminal, illegal or fraudulent act that the lawyer reasonably believes is likely to result in death or substantial bodily harm or substantial injury to the financial interest or property of another;

  (2) from committing a criminal, illegal or fraudulent act that the lawyer reasonably believes is likely to perpetrate a fraud upon a tribunal.
- **(c)** If a lawyer reveals information pursuant to RPC 1.6(b), the lawyer also may reveal the information to the person threatened to the extent the lawyer reasonably believes is necessary to protect that person from death, substantial bodily harm, substantial financial injury, or substantial property loss.

RPC 8.4. Misconduct

It is professional misconduct for a lawyer to:

- **(a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;**
- **(b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;**
- **(c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;**
- **(d) engage in conduct that is prejudicial to the administration of justice;**

Failure to Disclose Information

In re Seelig, 180 NJ 234, 250 (2004)

Thus, although *RPC* 3.3(a)(5) is not a new rule of law, it does represent an alteration of the balance in respect of lawyers' responsibilities. Both the *ABA Model Rules* and the *New Jersey Rules* dismiss misrepresentation as a permissible litigation tactic, even when carried out in the name of zealous representation. *ABA Model Rule* 3.3(a)(1) prohibits a lawyer from making "false statements of fact or law to a tribunal," as does our rule. Moreover, the comments to the *ABA Model Rule* expressly state that "[t]here are circumstances where failure to make a disclosure is the equivalent of an affirmative misrepresentation." *Model Rules of Prof'l Conduct R.* 3.3 cmt. 3 (2003). Our *RPC* 3.3(a)(5) codifies the ABA comment, thereby establishing a "more stringent requirement of disclosure than the standard set forth by the Model Rules," with the result that attorneys in New Jersey have been found to violate *RPC* 3.3(a)(5) when a failure to disclose material information misleads the court.

Failure to Disclose Information

In re Seelig, 180 NJ 234, 254 (2004)

Most important, respondent claims that his zealous advocacy was compelled by his client's Sixth Amendment right to counsel guaranteed by the United States Constitution. *U.S. Const.* amend. VI ("In all criminal prosecutions, the accused shall enjoy the right ... to have the Assistance of Counsel for his defence."). He argues that, even if he has violated our *New Jersey Rules,* his client's right superseded any professional duty owed by respondent to the judicial system.

First, we observe that the recent amendment to *RPC* 3.3(a)(5) states "that it shall not be a breach of this rule if the disclosure is protected by a recognized privilege or is otherwise prohibited by law." The new language expressly conveys exceptions implicit in the version of the rule that is operative in this case and that are, in part, explicitly described in the Debevoise Committee Report. *See* Report of the New Jersey Supreme Court Committee on the Model Rules of Professional Conduct, *N.J.L.J.,* July 28, 1983, *R.* 4.1, cmt. (explaining that "the constitutional rights of defendants in criminal cases must take precedence over any Rule permitting or mandating disclosure."). Consideration of the disclosure requirement under *RPC* 3.3(a)(5) clearly must take into account any competing constitutional right that delimits the scope of the rule.

5. Constitutional Rights – Fifth Amendment – Right to Silence at Sentencing

Mitchell v. United States, 526 US 314, 326-327 (1999)

Where the sentence has not yet been imposed a defendant may have a legitimate fear of adverse consequences from further testimony. Any effort by the State to compel [the defendant] to testify against his will at the sentencing hearing clearly would contravene the Fifth Amendment "The essence of this basic constitutional principle is 'the requirement that the State which proposes to convict *and punish* an individual produce the evidence against him by the independent labor of its officers, not by the simple, cruel expedient of forcing it from his own lips.'

The Fifth Amendment by its terms prevents a person from being "compelled in any criminal case to be a witness against himself." U.S. Const., Amdt. 5. To maintain that sentencing proceedings are not part of "any criminal case" is contrary to the law and to common sense. As to common sense, it appears that in this case, as is often true in the criminal justice system, the defendant was less concerned with the proof of her guilt or innocence than with the severity of her punishment. Petitioner faced imprisonment from one year upwards to life, depending on the circumstances of the crime. To say that she had no right to remain silent but instead could be compelled to cooperate in the deprivation of her liberty would ignore the Fifth Amendment privilege at the precise stage where, from her point of view, it was most important.

6. Constitutional Rights – Fifth Amendment – No adverse infrence based upon silence at sentencing

Mitchell v. United States, 526 US 314, 330 (1999)

The rule against adverse inferences is a vital instrument for teaching that the question in a criminal case is not whether the defendant committed the acts of which he is accused. The question is whether the Government has carried its burden to prove its allegations while respecting the defendant's individual rights. The Government retains the burden of proving facts relevant to the crime at the sentencing phase and cannot enlist the defendant in this process at the expense of the self-incrimination privilege.

Note:

Requirements of Directive 10-04

NJSA 2B:12-17.2

IV. Restitution

a. As it impacts on a plea agreement

In re Friedland, 59 NJ 209, 220 (1971) (Six-month suspension)

In the future, should an attorney wish to have complaints dismissed by his client he must first go before the prosecutor and a judge and make a full and open disclosure of the nature of the charges and the terms, if any, under which the dismissal is sought. The dismissal should not be consented to unless both the judge and the prosecutor are satisfied that the public interest as well as the private interests of the **189 complainant will be protected. Obviously, [consent] could never be given in a case such as the present one involving a vicious loan shark scheme enforced through threats and violence. Rather, the nature of the charges cried out for further public investigation and exposure.

b. 2C:29-4. Compounding

A person commits a crime if he accepts or agrees to accept any pecuniary benefit in consideration of refraining from reporting to law enforcement authorities the commission or suspected commission of any offense or information relating to an offense or from seeking prosecution of an offense. A person commits a crime if he confers or agrees to confer any pecuniary benefit in consideration of the other person agreeing to refrain from any such reporting or seeking prosecution. It is an affirmative defense to prosecution under this section that the pecuniary benefit did not exceed an amount which the actor reasonably believed to be due as restitution or indemnification for harm caused by the offense. An offense proscribed by this section is a crime of the second degree. If the thing of value accepted, agreed to be accepted, conferred or agreed to be conferred is any benefit of $200.00 or less, an offense proscribed by this section is a crime of the third degree.

V. Competence

1.1 Competence

A lawyer shall not:

- **(a)** Handle or neglect a matter entrusted to the lawyer in such manner that the lawyer's conduct constitutes gross negligence.
- **(b)** Exhibit a pattern of negligence or neglect in the lawyer's handling of legal matters generally.

RPC 1.3. Diligence

A lawyer shall act with reasonable diligence and promptness in representing a client.

In re Segal, 130 NJ 468, 480 (1992).

As with any trial attorney, a municipal prosecutor has the duty adequately to prepare for trial. The prosecutor must select the State's witnesses and prepare and present the State's evidence in court. Because the State is the municipal prosecutor's client, a failure to discharge the obligations of his office is a violation of a prosecutor's professional responsibility to represent the client diligently. When a prosecutor has available relevant evidence bearing on a prosecution, and the prosecutor's failure to present that evidence in the course of trial results in acquittal, that prosecutor has not diligently discharged his or her duty to prepare and present the State's case. Furthermore, when the failure to prepare for trial and present relevant evidence prejudices the State's case, the prosecutor's deviation from that duty may be so severe as to constitute gross negligence.

We note respondent's testimony that municipal prosecutors frequently prepare cases immediately preceding trial, typically in routine matters in which the State's witnesses are police officers who have been notified of the trial date by the municipal-court clerk. Without condoning that practice, we acknowledge the limited pretrial preparation routinely undertaken by some municipal prosecutors. "We understand that much of the subject matter in controversy in the municipal courts is minor and, in such cases, informal practices should continue, but in the more significant cases, a more careful, thorough procedure is warranted." See *State v. Holup*, 253 *N.J.Super.* 320, 326, 601 *A.*2d 777 (App.Div.1992).

VI.Scope of Representation

RPC 1.7. Conflict of Interest: General Rule

- **(a)** Except as provided in paragraph (b), 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, a former client, or a third person or by a personal interest of the lawyer.
- **(b)** Notwithstanding the existence of a concurrent conflict of interest under paragraph (a), a lawyer may represent a client if:
  (1) each affected client gives informed consent, confirmed in writing, after full disclosure and consultation, provided, however, that a public entity cannot consent to any such representation. When 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;
  (2) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;
  (3) the representation is not prohibited by law; and
  (4) 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.

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In re Guidone, 139 NJ 272, 277 (1994)

We have generally found that in cases involving a conflict of interest, absent egregious circumstances or serious economic injury to the clients involved, a public reprimand constitutes appropriate discipline. Of course, when an attorney's conflict of interest causes serious economic injury to clients, we have not hesitated to impose a period of suspension.

7:7-10. Joint Representation

No attorney or law firm shall enter an appearance for or represent more than one defendant in a multi-defendant trial or enter a plea for any defendant without first securing the court's permission by motion made in the presence of the defendants who seek joint representation. The motion shall be made as early as practicable in the proceedings in order to avoid delay of the trial. For good cause shown, the court may allow the motion to be brought at any time.

RPC 1.2. Scope of Representation and Allocation of Authority Between Client and Lawyer

- **(a)** A lawyer shall abide by a client's decisions concerning the scope and objectives of representation, subject to paragraphs (c) and (d), and as required by RPC 1.4 shall consult with the client about the means to pursue them. A lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation. A lawyer shall abide by a client's decision whether to settle a matter. In a criminal case, the lawyer shall consult with the client and, following consultation, shall abide by the client's decision on the plea to be entered, jury trial, and whether the client will testify.
- **(b)** A lawyer's representation of a client, including representation by appointment, does not constitute an endorsement of the client's political, economic, social or moral views or activities.
- **(c)** A lawyer may limit the scope of the representation if the limitation is reasonable under the circumstances and the client gives informed consent.
- **(d)** A lawyer shall not counsel or assist a client in conduct that the lawyer knows is illegal, criminal or fraudulent, or in the preparation of a written instrument containing terms the lawyer knows are expressly prohibited by law, but a lawyer may counsel or assist a client in a good faith effort to determine the validity, scope, meaning or application of the law.

In re Edson, 108 NJ 464, 473-73 (1987)

One need but listen to the tapes. The reaction to what is portrayed is at once fascinating and chilling. The members of this Court are not babes in the woods. We are invested with at least minimally acceptable levels of sophistication, of worldliness. Our professional backgrounds have exposed us, in varying degrees, to some of life's seamier aspects. We have travelled different roads in our professional careers. We practiced in different fields and encountered, collectively, all kinds of lawyers-most very good, some perhaps indifferent, and a mere handful bad. In short, we have been around enough that not much surprises us. But rarely have we encountered in our colleagues at the bar the kind of shocking disregard of professional standards, the kind of amoral arrogance, that is illustrated by this record. There could hardly be a plainer case of dishonesty touching the administration of justice and arising out of the practice of law.