

SECURITIES AND EXCHANGE COMMISSION
Washington, D.C.

SECURITIES EXCHANGE ACT OF 1934
Rel. No. 63306 / November 10, 2010

CORRECTED

Admin. Proc. File No. 3-12944

In the Matter of

STEVEN ALTMAN, ESQ.

c/o Jeffrey C. Hoffman, Esq.
Hoffman & Pollok LLP
260 Madison Avenue
22nd Floor
New York, NY 10016

OPINION OF THE COMMISSION

RULE 102(e) PROCEEDING

EXCHANGE ACT SECTION 4C PROCEEDING

Grounds for Remedial Action

Unethical or Improper Professional Conduct

Attorney engaged in unethical and improper professional conduct while representing prospective witness in Commission administrative proceeding, in violation of state bar disciplinary rules. *Held*, it is in the public interest to permanently deny him the right to appear or practice before the Commission.

APPEARANCES:

Jeffrey C. Hoffman, of Hoffman & Pollok LLP, for Steven Altman.

Melinda Hardy, *Donna S. McCaffrey*, and *Christopher M. Bruckmann*, for the Office of the General Counsel.

Appeal filed: February 2, 2009
Last briefs filed: January 19, 2010

I.

Steven Altman, Esq., an attorney licensed to practice law in New York, appeals from an administrative law judge's decision.¹ The law judge found that between January 28, 2004 and March 10, 2004 (the "relevant period"), Altman engaged in unethical and improper professional conduct while representing a prospective witness for the Division of Enforcement ("Division") in a Commission administrative proceeding. Specifically, the law judge found that Altman offered to have his client evade the Division's service of a subpoena and/or testify falsely in exchange for a financial package from two respondents in the proceeding. The law judge further found that Altman did so with scienter. As a result of his conduct, Altman violated Disciplinary Rules ("DR") 1-102(A)(4), 102(A)(5), and 102(A)(7) of the New York State Bar Association Lawyer's Code of Professional Responsibility.² The law judge suspended Altman from appearing or practicing before the Commission for nine months pursuant to Rule 102(e)(1)(ii) of the Commission's Rules of Practice³ and Section 4C of the Securities Exchange Act of 1934.⁴

¹ *Steven Altman, Esq.*, Initial Decision Rel. No. 367 (Jan. 14, 2009), 94 SEC Docket 13430.

² DR 1-102(A)(4) prohibits "conduct involving dishonesty, fraud, deceit, or misrepresentation." DR 1-102(A)(5) prohibits "conduct that is prejudicial to the administration of justice." DR 1-102(A)(7) prohibits "conduct that adversely reflects on the lawyer's fitness as a lawyer." After the events at issue, New York replaced its existing disciplinary rules with new professional conduct rules that follow the format of the American Bar Association ("ABA") Model Rules of Professional Conduct. Although the New York Rules of Professional Conduct did not become effective until April 1, 2009, new Rules 8.4(c),(d), and (h) are identical in substance to former DR 1-102(A)(4), (5), and (7), respectively. The conclusions reached in this proceeding would be the same, whether resolved under the Code of Professional Responsibility or the ABA Model Rules of Professional Conduct.

³ 17 C.F.R. § 201.102(e)(1)(ii) (providing, in pertinent part, that "[t]he Commission may censure a person or deny, temporarily or permanently, the privilege of appearing or practicing before it in any way to any person who is found by the Commission after notice and opportunity for hearing in the matter -- to be lacking in character or integrity or to have engaged in unethical or improper professional conduct").

⁴ 15 U.S.C. § 78d-3(a)(2) (providing, in pertinent part, that "[t]he Commission may censure any person, or deny, temporarily or permanently, to any person the privilege of appearing or practicing before the Commission in any way, if that person is found by the Commission, after notice and opportunity for hearing in the matter -- to be lacking in character or integrity, or to have engaged in unethical or improper professional conduct") (codifying Rule of Practice 102(e)).

The Office of the General Counsel ("OGC") appeals the nine-month suspension imposed on Altman. It seeks an order permanently denying him the privilege of appearing or practicing before the Commission. We base our findings on an independent review of the record, except with respect to those findings not challenged on appeal. We conclude that Altman's conduct is fundamentally inconsistent with the effective administration of justice and warrants a permanent denial of the privilege of appearing or practicing before the Commission.

A. Altman.

Altman has been a member of the New York bar since 1987 and practices law in New York City with his solely-owned firm, Altman & Company, P.C.⁵ Altman describes himself as a general commercial litigator who is regularly involved in state and federal court litigation and National Association of Securities Dealers, Inc. ("NASD," now known as FINRA) arbitrations. Altman has represented parties in proceedings before the Commission,⁶ but considers such matters to constitute a "small" percentage of his legal practice.

B. Altman's Representation of Rosen.

Altman has known Bonnie Rosen since he was in high school and she worked at a local insurance agency.⁷ From November 1999 to October 2003, Rosen worked as an administrative assistant with a salary of \$60,000 at Nextgen Inc. ("Nextgen"), a company that was owned by Jay Adoni and shared office space with Harrison Securities, Inc. ("Harrison"), a broker-dealer. Nextgen paid Rosen's salary, but she spent half of her time working for Harrison and its chief executive officer, Frederick C. Blumer, who was Adoni's close business associate.

Sometime in 2003, Rosen called Altman and told him that she had been forced out of her job at Nextgen. Rosen asked Altman for his help in obtaining severance pay from Nextgen and removing her name from two car leases she co-signed for Blumer, who used the cars and paid the leases. Altman testified that he agreed to assist Rosen as a "favor." Altman twice contacted

⁵ Altman is not a member of the bar of any other state.

⁶ See, e.g., *Sky Capital LLC*, Securities Exchange Act Rel. No. 55828 (May 30, 2007), 90 SEC Docket 2201; *Dominic A. Alvarez*, Exchange Act Rel. No. 53231 (Feb. 6, 2006), 87 SEC Docket 985; *Javed Anver Latef*, 56 S.E.C. 290 (2003), *petition denied*, 94 Fed. Appx. 969 (3d Cir. 2004) (Table).

⁷ Rosen declined to testify during OGC's investigation of Altman and asserted her Fifth Amendment privilege against self-incrimination. Rosen was not called as a witness at the May 2008 hearing in this Rule 102(e) proceeding.

Adoni and requested that he pay Rosen severance and remove her name from the car leases.⁸ On both occasions, Adoni refused the requests.

C. The Harrison Proceeding.

In 2003, the Division instituted administrative and cease-and-desist proceedings against Harrison, Blumer, and Nebrissa Song, alleging violations of the Exchange Act's books and records, net capital, and financial reporting provisions (hereinafter the "Harrison Proceeding"). Respondents raised as a defense to the books and records charge that they were unable to maintain the firm's general ledger for certain periods because a computer virus corrupted their files. A hearing in the Harrison Proceeding was held on January 20 through January 26, 2004 and March 8 through 10, 2004.

On January 26, 2004, Division staff learned from NASD staff that Rosen had called NASD and claimed to have information adverse to Harrison's and Blumer's computer virus defense. Division staff hoped, but were not sure, that Rosen would be able to testify that there was no computer virus that compromised Harrison's files. Division staff also thought that Rosen might be able to testify about Blumer's accounting practices. Division staff concluded that Rosen might be a good rebuttal witness.

Division staff called Rosen on January 28, 2004 and told her that they learned she might have useful information for the Harrison Proceeding. They asked Rosen if she would be willing to meet or speak with them. Rosen expressed some anxiety about testifying. She mentioned to Division staff that she co-signed two car leases for Blumer, and she was concerned that if Blumer was ordered to pay a civil penalty in the Harrison Proceeding, it might increase the likelihood that he would default on the leases and she would have to pay the remaining balance on the leases. Division staff testified that the car leases were not relevant to their case and were not a subject of interest to them, except insofar as the leases might prevent Rosen from testifying in the Harrison Proceeding. Rosen identified Altman as her attorney and referred Division staff to him.

D. Division Staff Communicate with Altman about Interviewing Rosen.

On or about January 28, 2004, Division staff spoke with Altman, who identified himself as Rosen's legal representative. During the conversation, Division staff described the nature of the Harrison Proceeding, indicated that it was ongoing, and expressed their interest in possibly using Rosen's testimony as part of their case. Division staff asked Altman if they could interview Rosen. Division staff testified that Altman was "noncommittal" about whether Rosen would

⁸ Altman testified that he did not open a file for Rosen or enter into a retainer agreement with her. Altman testified that Rosen was not an active, paying client, and that he did not bill her or get paid by her. Altman testified that he could not recall specifically telling Rosen that he would not bill her for his services, but that he never intended to do so.

agree to an interview and said that he would get back to them. Altman asked Division staff who was representing Harrison and Blumer, and they gave him Irving Einhorn's name.⁹

Over the next six weeks, Division staff contacted Altman multiple times in an effort to determine if Rosen would cooperate with them by agreeing to be interviewed and appearing for testimony in the Harrison Proceeding. Division staff testified that they wanted to know what Rosen knew and what she would say if called to testify as a witness. According to Division staff, Altman did not promptly return messages they left him, and when he answered their calls, he was "noncommittal" about Rosen's cooperation and whether he would allow them to interview her. At the May 2008 hearing in this proceeding, the law judge asked Altman if there was a reason why he did not return the Division's calls. Altman responded that the matter was not a "high priority" for him and that he paid it "very little" attention.

E. Altman Calls Einhorn Seeking a Financial Package for Rosen in Exchange for her Not Cooperating or Not Remembering Relevant Facts.

While Altman was "trad[ing] phone calls" with Division staff, he initiated a series of at least six telephone conversations with Einhorn that occurred between January 28 and February 10, 2004. Einhorn tape recorded five of these conversations without Altman's knowledge. During the conversations, Altman requested that Harrison and Blumer give Rosen a financial package consisting of severance pay and a release from her obligations under the car leases. In return, Altman suggested that Rosen would evade the Division's service of a subpoena, and/or if served, testify falsely that she could not recall facts damaging to Harrison's and Blumer's computer virus defense.

1. The first (untaped) telephone conversation.

Altman first called Einhorn on or about January 28, 2004. In this conversation, Altman told Einhorn that he represented Rosen and that the Division was interested in possibly using her as a witness in the Harrison Proceeding. Altman also told Einhorn that Rosen had left Nextgen under unfavorable circumstances with little or no severance pay; she had worked for Harrison and Blumer; and she was hostile towards them. Altman gave Einhorn an abbreviated version of his discussions with Adoni and said he thought this would be an opportune time to reinvigorate Rosen's requests for severance pay and removal of her name from the car leases. In his hearing testimony and briefs on appeal, Altman admitted that the Division's interest in Rosen as a witness gave him some leverage to renew her requests.

Einhorn testified that he was "stunned" by Altman's call. According to Einhorn, Altman "suggested that if a favorable . . . severance/compensation package could be arranged for Ms. Rosen, she would be more favorably disposed towards [his] client[s] if she was called as a

⁹ Einhorn has practiced law since 1972 and maintains a solo practice in California.

witness. . . and whether she would even appear as a witness."¹⁰ Einhorn interpreted Altman's call as "an extortion attempt, seeking money from [his] client[s] in exchange for favorable behavior and testimony from a witness." Einhorn understood that if paid the money, Rosen would be inclined to testify favorably, or not at all, against his clients, and if not paid the money, she would do damage to his clients at the hearing. Einhorn told Altman that he did not know what Altman was talking about and would have to talk to Blumer before he could respond.

Einhorn testified that he decided to tape record their subsequent conversations because he believed Altman was engaging in an "extortion attempt" and wanted to protect himself and his clients in the event Rosen testified in the Harrison Proceeding "without being paid off." Einhorn did not tell Altman that he was taping their conversations, and Altman was unaware that he was being taped.

2. The second (first taped) telephone conversation.

The second conversation, which was the first taped conversation, occurred on or about February 2, 2004, when Einhorn returned Altman's call after speaking to Blumer. Einhorn told Altman that Blumer said Rosen did not work for him and had nothing to do with his computer. The following discussion ensued:

MR. ALTMAN: I am not going to pull punches with you. They [Division staff] are aware[,] if asked, [Rosen] will testify that there was no virus in the computer,¹¹ and I suspect once they start peeling it away, some other very, very unhelpful stuff with respect to the books and records of the firm --

(Untranscribable)

MR. ALTMAN: As I understand it, [b]ased on her personal knowledge, . . . it was a small suite of executive offices that they all sat in.

MR. EINHORN: Uh-huh.

¹⁰ The law judge found that Einhorn gave credible testimony. A law judge's credibility findings are entitled to considerable weight because they are based on hearing the witnesses' testimony and observing their demeanor. *Anthony Tricarico*, 51 S.E.C. 457, 460 (1993). These credibility findings can be overcome only where the record contains substantial evidence for doing so. *Id.* We find no such evidence here. We therefore reject Altman's various arguments that the law judge erred in crediting Einhorn's testimony.

¹¹ Einhorn acknowledged that it would be "very detrimental" and "harmful" to his clients if Rosen were to testify that there was no computer virus because such testimony "directly related" to his clients' defense to the books and records charge.

MR. ALTMAN: And that this was not just a professional relationship, it was personal, not, not in any --

MR. EINHORN: Not a sexual or intimate way.

MR. ALTMAN: Not an intimate way, but a personal basis. And, listen, when you have a \$60,000 a year secretary co-signing for cars of a president of a firm, it . . . raises eyebrows initially.¹² Frankly, probably all this would have gone away if at least something would have happened,¹³ but, you know, if that's Fred's [Blumer] view, that is -- you know, it shouldn't have gone forward.

MR. EINHORN: No, no, no, I am here, Steven, trying to figure out what's happening here. So, she hasn't given that testimony?

MR. ALTMAN: That's correct. She is not a registered rep[resentative] so she is not at risk of losing her license if she doesn't appear any place.

MR. EINHORN: Well, suppose she gets a subpoena to appear at the hearing?

MR. ALTMAN: Well, you know[,] if she gets served, then, you know, she is going to be [like] any other human being. I, of course, can't advise her to evade the

¹² Altman testified that his statement, "[W]hen you have a \$60,000 a year secretary co-signing for cars of a president of a firm, it . . . raises eyebrows initially," meant that Blumer would look "foolish" on the witness stand in the Harrison Proceeding if Rosen testified that Blumer "threw her out on the street" without removing her name as co-signer on the car leases. Einhorn admitted that such testimony would make Blumer look "a little foolish" and be "a little awkward to explain," but Einhorn did not view it as detrimental to his clients' defense because the testimony was not probative of any issue in the proceeding. Einhorn stated, "Certainly[,] the [law] judge couldn't find that my clients violated the net capital and books and records provision[s] of the federal securities laws because the secretary . . . for Mr. Blumer carried two car leases for cars that he was using."

¹³ Einhorn testified that he interpreted Altman's statement, "Frankly, probably all this would have gone away if at least something would have happened," to mean that Rosen was "tossed out [of her job at Nextgen] without anything," and that her hostility towards Harrison and Blumer "would have gone away" if she had received a "satisfactory severance package."

[subpoena] process, but . . . [m]emory fades and the like.¹⁴ And you know[,] I don't know.

MR. EINHORN: So, what you are saying is[,] if they reach some agreement, she would be more favorably inclined?

MR. ALTMAN: That would be my guess as to what her recollection would be, you know.¹⁵ I don't have the personal knowledge, and I haven't done a full debriefing of her. I know Fred, I met him, as he may have told you.

MR. EINHORN: Yeah, no, [Fred] told me he likes you.

MR. ALTMAN: I like him. He is a nice guy. This is all silly. I hate to see this happen. Really, it would be terrible.

MR. EINHORN: Okay.

MR. ALTMAN: If somebody just does the right thing,¹⁶ and --

MR. EINHORN: But you think they learned about this from others and were pointed to her. They have other people lined up that are --

MR. ALTMAN: No, no. I don't think that is the case.

MR. EINHORN: You don't think they have other people coming to testify?

MR. ALTMAN: No, no, not with respect to what I talked to you about.

¹⁴ When asked about Altman's statements, "[I]f [Rosen] gets served, then . . . she is going to be [like] any other human being," and "I . . . can't advise her to evade the [subpoena] process, but . . . [m]emory fades and the like," Einhorn testified that he understood that Rosen "would be very difficult for [Division staff] to find and serve, or . . . if they found . . . and served her, like everybody else, she would have to come . . . to the hearing, but she could have amnesia, she could be 'I don't remember,' 'I don't recall' and 'I don't know.'"

¹⁵ Einhorn testified that he understood Altman's statement, "That would be my guess as to what her recollection would be," to mean that if Einhorn's clients gave Rosen a financial package, she "would be more favorably disposed towards [them] and . . . would be difficult to serve [by subpoena], or if served, would not give . . . testimony adverse to" their interests.

¹⁶ Einhorn testified that he interpreted Altman's statement, "If somebody just does the right thing," to mean that his clients should "do right" by Rosen and give her a financial package.

MR. EINHORN: Okay.

MR. ALTMAN: I think if you cut it off with her, then it is closed. ¹⁷ That will be[,] you know[,] killing themselves.

3. The third (second taped) telephone conversation.

The third conversation, which was the second taped conversation, occurred on or about February 7, 2004. Altman initiated the conversation to give Einhorn a "heads up" that Division staff had been calling him and that he, Altman, told the staff that he was not "focusing" on the matter:

MR. ALTMAN: Hi, I just wanted to give you the heads up. Primoff [a Division staff attorney] called me again today.

MR. EINHORN: Yeah?

MR. ALTMAN: Just wants to know what the story was. I said I was not focusing on the matter, I appreciated him following up with me.

MR. EINHORN: Okay. So he is going to call you back and ask you --

MR. ALTMAN: I said, "You are welcome to call me if I don't call you." He said, "Oh, we'll certainly bug you." I said, "I am sure you will. You are welcome to."

MR. EINHORN: Well, I am going to call my client.

MR. ALTMAN: I expect [Primoff] wants to push me sometime before the end of the week.

MR. EINHORN: I am sure. We have got a hearing coming up. My client, Fred Blumer, is going to take the witness stand around March the 8th, so you know . . . [Primoff's] going to want your client for purposes of rebuttal, or impeachment or whatever. Anyway, I don't know what Fred is going to do, but I'll talk to him and let you know.

MR. ALTMAN: Okay, just thought I'd give you the heads up.

¹⁷ Einhorn testified that he understood Altman's statement, "[I]f you cut it off with her, then it is closed," to mean, "[d]one deal; nobody else is going to step forward on behalf of the SEC to say that Mr. Blumer's records weren't damaged by a virus that corrupted the files on his computer."

4. The fourth (third taped) telephone conversation.

The fourth conversation, which was the third taped conversation, occurred on or about February 9, 2004. Einhorn called Altman to inform him that Blumer would not give Rosen a severance package:

MR. EINHORN: Anyway, I spoke to Fred [Blumer], and he has no control over, you know, anything that you are suggesting. He feels that this is an extortion attempt, trying to, you know, buy [Rosen] a severance agreement. If he gets Jay [Adoni] to do this, her testimony will be more favorable to him. And he just -- he doesn't want to get involved in something like that. So she will do what she wants to do and testify however she wants to testify, and that will have to be it.

MR. ALTMAN: Okay. That's probably unfortunate for you, ¹⁸ but --

MR. EINHORN: You know, look --

MR. ALTMAN: -- I am certainly not going to facilitate any untruthful testimony. ¹⁹ And,

MR. EINHORN: Well --

MR. ALTMAN: To the extent I am involved in the testimony, the testimony will be as limited as possible, but --

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MR. ALTMAN: My understanding is [Rosen] is going to directly say that there was no -- I don't have my notes in front of me, but, bug in his computer that precipitated any loss of records. The truth is there were no records. She had access to all of them, that was part of the grist of the work of what she did, even though she was technically an employee of Nextgen and not Harrison.

¹⁸ Einhorn testified that he understood Altman's statement, "That's probably unfortunate for you," to mean that "this could all go away if [Rosen] got the right [financial] package[,] meaning that either she wouldn't be served, or if served, her testimony would not hurt [his] client."

¹⁹ When asked his reaction to Altman's statement, "I am certainly not going to facilitate any untruthful testimony," Einhorn testified, "I don't know what he's talking about when he says something like that. I think it's just self-serving."

MR. EINHORN: If Nextgen settled with her, she wouldn't remember that?

MR. ALTMAN: You know, I don't even know -- you know, she was not a registered person, and you know, I don't even know what her address is. The SEC can find her or not find her.

MR. EINHORN: Well, you know, it is up to them. You know, what you are saying, she doesn't have a subpoena, she doesn't have to cooperate, but she will go in there and burn them unless they agree to pay her some severance and make her happy financially. And,

MR. ALTMAN: No. I think they should have done that anyway. I am reinvigorating the offers I made to Jay [Adoni], you know, a year ago.

MR. EINHORN: Well --

MR. ALTMAN: Well, I thought [Adoni] made a misjudgment in doing that, . . . and I think he is probably making a misjudgment now. It is kind of -- you know, think about her testimony. Here is a \$60,000 a year secretary who's required to be -- The president [Blumer] is such a bad manager of his own financial affairs that it was required for him to get two car leases, that she co-sign it [sic] and despite repeated demands that she be relieved from that co-obligation, the president denied [Rosen's demands]. It is[,] you know[,] it's just terrible, terrible.

MR. EINHORN: I can tell you why. The guy is separated from his wife, and he has had problems, but that is neither here nor there. Just I don't know why [Rosen] agreed to do it, but you know she agreed to do it, and I am sorry she is not happy with her bargain and things didn't work out for her. But we're not gonna, he doesn't want to buy her silence. Okay?

MR. ALTMAN: That's not what this is about anyway.

MR. EINHORN: What the hell is this about?

MR. ALTMAN: You pays your money, you take your chances. ²⁰ They should have settled with [Rosen] a long time ago. This was another opportunity to do that,

²⁰ Einhorn testified that he understood Altman's statement, "You pays your money, you take your chances," to mean that Blumer and Adoni were "faced with a potential disaster on their hands"; Rosen "was going to bury them" at the hearing for not doing the "right thing" and agreeing to a financial package; and his clients would "suffer the consequences."

you didn't do that. There are consequences to that, some of which are controllable, some are not.

MR. EINHORN: Okay. Well. All right. You know, I just feel I am not -- Fred has decided he is not going to buy her silence.

MR. ALTMAN: Fred has nothing to do with this decision. ²¹ Come on, Irv.

MR. EINHORN: You got the wrong guy here. You got the wrong guy here. I deal with Fred Blumer and no one else.

MR. ALTMAN: I am sure you do. I am sure you do. But, you know, [Blumer] runs an hour's worth of that business by himself. That is just the reality of it. It has been the economic reality of it. And he doesn't have the financial wherewithal to get her off the co-signing of the lease[s], but his bank, as you described him [Adoni], does, and he [Adoni] should do that, and he is not doing that.

This reaction doesn't surprise me because Jay [Adoni] doesn't seem to be the kind of guy that you back into a corner and I regret that he is perceiving it this way. What [Adoni] really should do is take care of this gal who worked for . . . many years, and these things all just disappear and everyone goes on with their lives.²² And, you know, it's the stupid things in my experience that end up affecting people in much more significant ways than they should.

MR. EINHORN: Okay. Steve, I can only pass the message along to you. That is all I am doing.²³

²¹ Einhorn testified that he understood that Altman believed that Adoni was "the real power behind the scenes," and that Blumer only needed to get Adoni "to come up with the [financial] package[] and everything would be taken care of."

²² Einhorn testified that he understood Altman's statement, "What [Adoni] really should do is take care of this gal . . . and these things all just disappear," to mean that his clients should "[g]ive [Rosen] the money, [and] it [her adverse testimony] will go away and disappear one way or the other; either . . . ducking service of process, or if served and asked whether there was a [computer] virus, you know, or any kind of bug, you know, I don't remember, I can't recall, I don't know anything about that."

²³ When Einhorn was asked what he thought Rosen would do if she did not get a financial package, he stated, "I believe[d] that [Rosen] would seek revenge . . . in order to stick it
(continued...)

MR. ALTMAN: I hear you. I hear you. It's a colossal, colossal mistake, Irv.²⁴ Personally, because I like Fred personally. It's regrettable, really regrettable. Just so, so stupid.

5. The fifth and sixth (fourth and fifth taped) telephone conversations.

The fifth telephone conversation, which was the fourth taped conversation, occurred on February 10, 2004, when Einhorn called Altman in response to a message Altman had left asking Einhorn to call him.²⁵ Altman told Einhorn that he was on another telephone call and would call him back.

The sixth telephone conversation, which was the fifth taped conversation, occurred the same day when Altman called Einhorn back. Altman told Einhorn that Rosen was "going in" for an interview with the Division unless there was a "way to figure out some last clear chance to get out of it":

MR. ALTMAN: I just wanted to give you a heads up. The SEC has been badgering me.
And,

MR. EINHORN: But they don't have a subpoena, and they don't have anything.

MR. ALTMAN: She is going to go in next week.

MR. EINHORN: Okay.

MR. ALTMAN: That is her call. I have to tell you, this is not -- I don't represent cooperators. Not just typically. I am trying to think back. I don't think I ever have, I just don't do it. I am always on the other side. I represent you know the bad guys or the good guys.

²³ (...continued)

to Mr. Adoni and my client for what she believed was the shabby treatment she received at their hands. She would get on the witness stand and do everything she could to inflict damage on my client."

²⁴ Einhorn testified that he understood Altman's statement, "It's a colossal, colossal mistake," to mean that Blumer and Adoni were being "stupid" because, "for a little bit of money[,] they could make this problem disappear." By refusing to give Rosen a financial package, they would "bring disaster upon themselves" at the Harrison Proceeding hearing.

²⁵ Einhorn testified that he believed Altman was calling him to "[t]ake another run at getting [Rosen] some money out of this."

MR. EINHORN: Or the defendants. You are defense counsel.

MR. ALTMAN: I typically am. I am. I am plaintiff in some cases, but I am definitely a defense counsel.

MR. EINHORN: Umm-hmm.

MR. ALTMAN: So, you know, it is just foreign to me, and it is not -- I don't want to say uncomfortable, but particularly having met Fred [Blumer], it is regrettable, and I just wanted to sort of -- I understand Jay [Adoni]'s -- I think I have a feeling for his personality and psyche, and I certainly understand that his natural first reaction to this is, look, it is a stick-up, what are you doing? I don't get stuck up by anybody, f*** you, so that's why we are not paying. As just as a general business practice, and personality wise and just trying to see -- since I know how bad a result that is for everybody --

MR. EINHORN: Umm-hmm.

MR. ALTMAN: If there's not some other way to figure out some last clear chance to get out of it,²⁶ because, you know, there is no --

MR. EINHORN: What is it gonna take? What is the bottom line? What is it going to take? What kind of package is this? I am a communicator here. What is the package that she wants to, you know, not cooperate or whatever?

MR. ALTMAN: Get her off those leases and, you know, a year's salary, and you can even pay it out over a year. As long as we've got . . .

MR. EINHORN: What will we get if they do that, she won't cooperate or she won't remember?

MR. ALTMAN: Uh, [p]robably both.

MR. EINHORN: Ok. All right. Let me pass it on to the client one more time, and --

* * *

MR. EINHORN: All right. Well, I will make a call to Fred [Blumer] tomorrow.

²⁶ Einhorn testified that he understood Altman to mean that Rosen was "going in and giving an unfavorable interview with the SEC, which would . . . result in her taking the witness stand . . . when the hearing recommences and giving adverse testimony to [his] clients."

MR. ALTMAN: I appreciate it.

MR. EINHORN: And tell him what you said and that [Rosen] is going in next week unless something else happens.

MR. ALTMAN: Help me, help me not do this. I don't want to do this.

Altman did not hear from Einhorn again, and they had no further conversations after February 10, 2004. Einhorn testified, and Altman does not dispute, that their conversations did not result in any agreement between Einhorn's clients and Rosen.

F. The Division Subpoenas Rosen to Testify in the Harrison Proceeding.

Unaware of Altman's conversations with Einhorn and unsure whether Rosen would cooperate with them, on or about March 2, 2004, Division staff served Rosen with a subpoena compelling her to appear and testify as a witness in the Harrison Proceeding. On March 3, 2004, after confirming that Rosen had been served, Division staff notified Altman and again asked to interview Rosen before she appeared and testified at the hearing.²⁷ According to Division staff, Altman was still "noncommittal."

Division staff eventually spoke to Rosen in a telephone interview on March 8, 2004, the day that the hearing in the Harrison Proceeding resumed. Altman participated in the telephone interview as Rosen's attorney. During the telephone interview, Division staff asked Rosen about Harrison's and Blumer's computer virus defense. Rosen told Division staff that a Harrison information technology manager admitted to her that a letter he signed in support of Harrison's and Blumer's computer virus defense was false. Division staff also asked Rosen about Blumer's accounting practices. Division staff spoke to Rosen once again in person on the morning of March 10, 2004, the day she testified.²⁸ Altman was present at this in-person interview as well.

²⁷ Division staff testified that they deliberately waited until Rosen had been served with a subpoena before notifying Altman because Altman had not yet made Rosen available for an interview and they did not want him to be able to contact Rosen and interfere with service of process. According to Division staff, Altman expressed some surprise that subpoena service by Federal Express was valid in Commission administrative proceedings. In his hearing testimony, Altman acknowledged that he did not offer to accept service of a subpoena on Rosen's behalf.

²⁸ Division staff testified that the information they received from Rosen during the telephone and in-person interviews was "less comprehensive than what we [the staff] thought we would be getting, based on what the NASD told us." According to Division staff, Rosen "didn't either know or didn't remember some of the things that we thought she would know from what the NASD told us."

G. Einhorn Uses Altman's Taped Statements to Impeach Rosen on Cross-Examination.

On March 10, 2004, the Division called Rosen to testify as a rebuttal witness in the Harrison Proceeding hearing. Altman attended the hearing as Rosen's counsel, but was not allowed to participate in the proceeding. Before Rosen began testifying, Einhorn requested an off-the-record conference. The law judge, Division staff, and Song's counsel were in attendance, but not Altman. At the conference, Einhorn disclosed for the first time that Altman had called him repeatedly to obtain a financial package for Rosen, and that he, Einhorn, had tape recorded several of the telephone calls. Einhorn stated that he believed Altman had engaged in extortion or blackmail during those calls because Altman demanded a severance payment from Harrison and Blumer to prevent Rosen's testimony from being damaging to them at the hearing. Einhorn told Division staff that if they called Rosen to testify as a witness, he would play the tapes at the hearing and refer the matter to the FBI, but that if they did not call Rosen, he would not pursue the matter further. At the Division's request, Einhorn played the tapes of the calls. Division staff were "very disturbed" by the substance of Altman's conversations. Nevertheless, they concluded that the conversations did not indicate Rosen would be untruthful and elected to proceed with her testimony.

On direct examination, Rosen testified that a Harrison information technology manager admitted to her that a letter he signed in support of Harrison's and Blumer's computer virus defense was false.²⁹ Division staff did not raise the subject of the car leases during her direct testimony because they did not believe that the leases were relevant to the proceeding. On cross-examination, Einhorn asked Rosen about the leases because he wanted to show her "bias and hostility" towards his clients. Einhorn then played the tapes of Altman's conversations on the record.³⁰

H. Altman's Explanations of his Taped Statements.

Altman testified that he first learned of the existence of the tapes during Einhorn's cross-examination of Rosen. Listening to the tapes, Altman could not believe that Einhorn asked him, "What will we [Harrison and Blumer] get if they do that [*i.e.*, give Rosen a severance payment and remove her name from the car leases], she won't cooperate or she won't remember?," and that he replied, "Uh, [p]robably both." Altman had "no memory" of saying those words and could not

²⁹ Division staff testified that Rosen's direct testimony was "less fulsome compared to what [they] had been led to expect" from NASD staff.

³⁰ The tapes were admitted into evidence in the Harrison Proceeding as Respondents' Exhibits 48, 49, and 50. The tapes were admitted into evidence in this Rule 102(e) proceeding as OGC Exhibit 13. Altman challenged the admissibility of the tapes before the law judge, but it appears that he has abandoned this issue on appeal.

believe they "fell out of [his] mouth." Altman did not know why he said, "[p]robably both," and admitted that "[t]hose words should have never been said."

But Altman denied that he intended to have Rosen evade service of a subpoena and/or give false testimony in exchange for a financial package from Harrison and Blumer. Altman testified that the sole objective of his telephone conversations with Einhorn was to "appeal" to Einhorn as a "fellow defense counsel" and "convince him to get [Rosen] off the [car] leases and get her some money" so she "wouldn't be a pissed-off ex-secretary," or angry witness, at the hearing. Altman testified, "I was just trying to negotiate [with Einhorn] and say[,] got to be some way, just not make Fred [Blumer] look bad [on the witness stand], that's all I really had to work with. Her testimony is going to be her truthful testimony. She's not going to evade [subpoena] service. But if you paid her, she'll not be pissed-off." In Altman's view, Blumer's conduct in having Rosen co-sign the car leases and keeping Rosen on the leases after her employment ended made Blumer "look bad" and was his "best ammunition" against Blumer.³¹

Altman testified that he was "shocked," "stammering," and "blubbing" during the fourth (third taped) conversation when he realized Einhorn was interpreting his remarks as proposing "some kind of exchange" of financial benefits for substantive testimony. Altman testified that he told Einhorn, "No," and "That's not what this is about," but admitted that he did not seek to clear up Einhorn's purported confusion by saying, "[H]ey, what's going on, what are you talking about?," "[E]xcuse me, but where are you coming from?," "[N]o, stop it, I don't do that," or similar words. Altman explained, "In my mind, if I said no -- if I had done what I would do in another context, which is raise my voice, scream, yell, curse and slam the phone down, I couldn't do that with Mr. Einhorn in those conversations because if I did, I understood there was no chance that we could get what I was trying to negotiate for, if I told him."

The law judge found that Altman's testimony was not "candid and credible" and rejected his explanations of his taped statements. In her view, none of Altman's explanations or defenses could change the plain meaning of his words, which supported a finding that Altman knowingly and intentionally engaged in unethical and improper professional conduct.³² As noted previously,

³¹ The record shows that Altman had no reason to believe that Division staff were interested in the car leases as impeachment material. As discussed, Division staff knew about the leases from their initial contact with Rosen, but they did not believe that the leases were relevant to the Harrison Proceeding. Similarly, Einhorn thought that the leases were irrelevant to any of the charges against his clients. *See supra* note 12.

³² For example, to bolster his claim that the car leases were relevant impeachment evidence, Altman contended that the car leases were the focus of his conversations with Einhorn. Altman pointed to his statement in the second (first taped) conversation that Rosen would "testify that there was no virus in the computer, and [...]some other very, very unhelpful stuff with respect to the books and records of the firm." Altman asserted that the "very unhelpful stuff with
(continued...)

a law judge's credibility findings are entitled to considerable weight absent substantial evidence to the contrary.³³ Altman has not shown, nor do we find, substantial evidence contradicting the law judge's adverse credibility findings, which were based, among other things, on hearing Altman's testimony and observing his demeanor.³⁴

I. Subsequent Events.

After the hearing in the Harrison Proceeding, Einhorn withdrew as counsel for Harrison and Blumer and disclosed the tapes to law enforcement authorities.³⁵ In addition, Division staff reported the substance of Altman's tape recorded conversations to the Commission for "possible attorney misconduct."³⁶ In September 2004, the law judge in the Harrison Proceeding issued an initial decision finding that Harrison and Blumer had violated the federal securities laws,³⁷ but that Rosen had been "thoroughly impeached" on cross-examination and was not a reliable witness.³⁸

³² (...continued)

respect to the books and records of the firm" referred to the car leases. Altman's argument adds words to the transcript of his taped conversations that do not exist.

³³ *See supra* note 10.

³⁴ We reject Altman's claim that the law judge "displayed a pronounced prejudice against" him. We find no evidence of prejudice or other improper conduct. In all events, our *de novo* review of the record cures whatever prejudice, if any, that may have existed. *See, e.g., Robert Bruce Orkin*, 51 S.E.C. 336, 344 (1993) (stating that "our *de novo* review of this matter cures whatever bias or disregard of precedent or evidence, if any, that may have existed below"), *petition denied*, 31 F.3d 1056 (11th Cir. 1994).

³⁵ The record does not indicate that any criminal action has been taken against Altman.

³⁶ *See* 17 C.F.R. § 203.7(e) (authorizing officer conducting formal investigative proceeding to report to Commission "any instances where any witness or counsel has been guilty of dilatory, obstructionist or contumacious conduct during the course of an investigation or any other instance of violation of these rules"). The Commission referred the matter to OGC for investigation, *see* 17 C.F.R. § 200.21(a) (providing that the General Counsel is responsible for conducting preliminary investigations into potential violations of Rule 102(e) by attorneys), resulting in the initiation of this Rule 102(e) proceeding against Altman.

³⁷ *See Harrison Secs.*, Initial Decision Rel. No. 256 (Sept. 21, 2004), 83 SEC Docket 2986, *declared final*, Exchange Act Rel. No. 50614 (Oct. 29, 2004), 84 SEC Docket 117.

³⁸ *Harrison Secs.*, 83 SEC Docket at 2996.

III.

Rule 102(e) is the primary tool available to the Commission to protect the integrity of its administrative processes.³⁹ It enables the Commission to initiate administrative disciplinary proceedings against professionals who lack integrity or competence, who engage in unethical or improper professional conduct, or who are found to have violated the federal securities laws or rules and regulations thereunder.⁴⁰ In interpreting the phrase "unethical or improper professional conduct," the Commission has stated that it will hold attorneys who practice before it to the standards to which they are already subject, including state bar rules.⁴¹ Although Rule 102(e) and Exchange Act 4C do not specify the mental state necessary to discipline an attorney for "unethical or improper professional conduct,"⁴² the record establishes that Altman engaged in such conduct with scienter.⁴³

³⁹ *Implementation of Standards of Professional Conduct for Attorneys*, Exchange Act Rel. No. 46868 (Nov. 21, 2002) (proposed rules), 78 SEC Docket 3240, 3241; *see, e.g., Marrie v. SEC*, 374 F.3d 1196, 1200 (D.C. Cir. 2004) (stating that Rule 102(e) "is directed at protecting the integrity of the Commission's processes, as well as the confidence of the investing public in the integrity of the financial reporting process"); *Touche Ross & Co. v. SEC*, 609 F.2d 570, 582 (2d Cir. 1979) (stating that Rule 102(e)'s predecessor, Rule 2(e), "represents an attempt by the Commission to protect the integrity of its own processes"; holding that Rule 2(e)'s provisions were "reasonably related" to the purposes of the federal securities laws and therefore valid).

⁴⁰ *See* 17 C.F.R. § 201.102(e)(1)(i)-(iii).

⁴¹ *See William R. Carter*, 47 S.E.C. 471, 508 (1981) (stating, in context of Rule 2(e) proceeding, that "we perceive no unfairness whatsoever in holding those professionals who practice before us to generally recognized norms of professional conduct, whether or not such norms had previously been explicitly adopted or endorsed by the Commission. To do so upsets no justifiable expectations, since the professional is already subject to those norms.") (footnote omitted); *see also Implementation of Standards of Professional Conduct for Attorneys*, 78 SEC Docket at 3241 n.13 (stating that Rule 102(e) "enables the Commission to discipline professionals who have engaged in improper professional conduct by failing to satisfy the rules, regulations or standards to which they are already subject, including state bar ethical rules governing attorney conduct . . .").

⁴² *Cf.* 17 C.F.R. § 201.102(e)(1)(iv) (expressly setting forth mental state standards for accountants who engage in "improper professional conduct" under Rule 102(e)(1)(ii)).

⁴³ Because we conclude that Altman's conduct demonstrated scienter, we do not decide whether some other culpability standard would also suffice. Although the Commission
(continued...)

A. Altman Engaged in Unethical and Improper Professional Conduct.

The record shows that during the relevant period, Altman initiated and engaged in a series of telephone conversations with Einhorn in an attempt to obtain a financial package for Rosen, a prospective Division witness in the Harrison Proceeding. The plain meaning of Altman's words, recorded on tape, establishes that he was proposing a *quid pro quo*: if Harrison and Blumer gave Rosen severance pay (a year's salary or about \$60,000) and removed her name as co-signer on the car leases, she would not cooperate with the Division (by avoiding service of a subpoena or not complying with the subpoena) and/or falsely testify that she could not remember relevant facts detrimental to Harrison's and Blumer's computer virus defense.

In the first (untaped) conversation, Altman informed Einhorn that Rosen was hostile towards Harrison and Blumer and had information damaging to them. Altman suggested that if Harrison and Blumer could arrange a severance or compensation package for Rosen, she would be more favorably disposed towards them if called as a witness, or she might not appear as a witness at all. Altman's call "stunned" Einhorn, who interpreted it as an "extortion attempt," seeking money for a witness in return for her favorable behavior and/or testimony.

In the second (first taped) conversation, Altman informed Einhorn that Rosen would testify there was no virus in Blumer's computer. Einhorn knew that this testimony would be "very detrimental" and "harmful" to his clients. Einhorn asked Altman, "So, she hasn't given that testimony?" Altman replied, "That's correct," and indicated that Rosen would not lose her livelihood if she did not cooperate with the Division. Einhorn next asked, "Well, suppose she gets a subpoena to appear at the hearing?" Altman stated that he could not advise Rosen to evade subpoena service, but suggested that, if served, Rosen's memory of the relevant facts might "fade." Einhorn then asked, "So, what you are saying is[,] if they reach some agreement, she would be more favorably inclined?" Altman responded, "That would be my guess as to what her recollection would be," meaning that Rosen's recollection would be more favorable towards Harrison and Blumer if she received a severance payment. Altman further informed Einhorn that he did not think the Division had other witnesses lined up to testify that there was no computer virus. "I think if you cut it off with her[,] Altman relayed to Einhorn, "then it is closed." Altman thus conveyed to Einhorn, and Einhorn understood, that if Rosen received a financial package from Harrison and Blumer, she would not cooperate with Division staff and/or would testify falsely that she did not remember facts damaging to their computer virus defense.

In the fourth (third taped) conversation, Einhorn informed Altman that Blumer thought Altman was engaging in an "extortion attempt"; Blumer would not agree to pay Rosen; and Rosen would have to "testify however she want[ed] to testify." Altman did not dispute the

⁴³ (...continued)

has cautioned against bringing Rule 102(e) attorney disciplinary proceedings based on negligent legal advice, it did so in *dicta* and the question was not squarely presented in the case. *See Scott G. Monson*, Exchange Act Rel. No. 28323 (June 30, 2008), 93 SEC Docket 7517, 7522-25.

characterization of his proposal as an "extortion attempt." Instead, Altman replied, "That's probably unfortunate for you."⁴⁴ Einhorn construed Altman's response to mean that Rosen's damaging testimony would "go away" if she received a financial package.

After Altman reiterated that Rosen would testify there was no computer virus, Einhorn asked, "If Nextgen settled with her, she wouldn't remember that?" Altman replied that Rosen was not "a registered person," he did not know her address, and the Division could "find her or not find her." Einhorn stated that Blumer did not want to "buy her silence," to which Altman responded, "That's not what this is about anyway." Einhorn then asked, "What the hell is this about?" Altman answered, "You pays your money, you take your chances. They should have settled with her a long time ago. This was another opportunity to do that, you didn't do that. There are consequences to that, some of which are controllable, some are not." When Einhorn repeated that Blumer would not "buy [Rosen's] silence," Altman insisted that Blumer had "nothing to do with this decision," Adoni controlled the finances, and Adoni should "take care" of Rosen and "these things" would "disappear." Altman thus conveyed to Einhorn, and Einhorn understood, that if Rosen received a financial package, her damaging testimony would "disappear" because she would avoid service of a subpoena and/or falsely claim not to remember relevant facts if served. Einhorn further understood that if Harrison and Blumer did not give Rosen a financial package, they would be taking their "chances" and suffer the "consequences" at the hearing.

In the sixth (fifth taped) and final conversation, Altman stated that he understood Adoni's "natural first reaction" was to construe his proposal as a "stick-up" and refuse to pay Rosen, but that such a position would lead to a "bad" result. Einhorn tried to pin Altman down as to what exactly he was offering from Rosen in return for a financial package from Harrison and Blumer: evading service of a subpoena or falsely testifying that she did not remember relevant facts. Altman answered, "Uh, [p]robably both." Altman's answer left no uncertainty as to the terms of his proposed *quid pro quo*.

B. Altman Violated New York Ethics Rules.

Altman agreed that, at all relevant times, he understood his ethical obligations and was able to tell the difference between right and wrong and understand the nature and consequences of his actions. Despite what he understood, Altman violated fundamental ethics rules to which

⁴⁴ On appeal, Altman argues that this statement "was not a clumsy attempt to deny extortion while committing it[,] but rather another (clumsy) attempt at lawful hectoring to obtain things to which Ms. Rosen was arguably entitled while truthfully denying unlawful intent." We find no support in the record for this position and note further that legal argument is not evidence.

he was subject as a member of the New York bar.⁴⁵ Altman's actions in repeatedly seeking financial benefits for his client, a prospective Division witness in a Commission administrative proceeding, in exchange for her evasion of subpoena service and/or provision of false testimony, constituted conduct involving "dishonesty, fraud, deceit, or misrepresentation," in violation of DR 1-102(A)(4). Altman acted knowingly and with an intent to deceive or mislead Division staff and the law judge.⁴⁶ Altman's objective was to interfere with the truthful disclosure of facts pertaining to Harrison's and Blumer's computer virus defense, and thereby impair the integrity of the Harrison Proceeding.

Altman knew before he first contacted Einhorn that the Harrison Proceeding was ongoing; that the Division wanted to interview Rosen as a prospective witness; that Division staff believed Rosen had information which could rebut Harrison's and Blumer's computer virus defense; and that Einhorn was counsel for Harrison and Blumer. Altman also knew that Rosen would testify there was no computer virus that compromised Harrison's files. Altman further believed that Rosen had other information about the firm's files that would be "very, very unhelpful" to Harrison and Blumer. In his hearing testimony and briefs on appeal, Altman acknowledged that he thought this was an opportune time to renew Rosen's requests for financial benefits from Harrison and Blumer because the pending Harrison Proceeding and the Division's interest in Rosen as a witness gave him some leverage.

At the same time, Altman knew that Division staff had only second- or third-hand information from NASD and himself about Rosen's potential testimony. Altman did not want Division staff to interview Rosen and learn exactly what she knew until he found out if Harrison and Blumer would pay her. As a result, Altman put off the Division staff's multiple requests to interview Rosen by not returning their calls or falsely stating that he was not "focusing" on the matter when he called them back.

With Division staff's efforts to interview Rosen effectively forestalled, Altman repeatedly contacted Einhorn and proposed that, in exchange for a financial package, Rosen would avoid

⁴⁵ See generally *In re Snyder*, 470 U.S. 634, 645-46 n.7 (1985) (referring to the duty in DR 1-102(A)(5) as "almost universally recognized"); *Carter*, 47 S.E.C. at 508 n.65 (describing prohibition embodied in DR 1-102(A)(4) to be of a "fundamental" nature).

⁴⁶ New York courts have held that scienter is a necessary element of a DR 1-102(A)(4) violation, see, e.g., *Matter of Altmerianos*, 160 A.D.2d 96, 559 N.Y.S.2d 712 (1st Dept. 1990) (stating that "venal intent," which is a necessary element of a DR 1-102(A)(4) violation, does not include conduct "which lacks an element of scienter, deceit, intent to mislead, or knowing failure to correct misrepresentations which can be reasonably expected to induce detrimental reliance by another") (quoting definition of fraud in "Definitions" section of Code of Professional Responsibility), but not a DR 1-102(A)(7) violation, see *In re Latimore*, 252 A.D.2d 217, 683 N.Y.S.2d 526 (1st Dept. 1999), *appeal and reargument denied*, 260 A.D.2d 170, 693 N.Y.S.2d 434 (1st Dept. 1999).

service of a subpoena and/or testify falsely if served in the Harrison Proceeding. Altman sought to induce Einhorn's clients to accept this *quid pro quo* by telling Einhorn that Rosen was hostile towards Harrison and Blumer and would give testimony damaging to them at the hearing unless they did the "right thing" and paid her. While Altman testified that he said, "No," and "That's not what this is about," in response to Einhorn's statements that Blumer would not "buy" Rosen's silence, he admitted that he never said, "[H]ey, what's going on, what are you talking about?," or "[E]xcuse me, but where are you coming from?" In light of Altman's hearing testimony that he was "shocked" that Einhorn interpreted his remarks as proposing a *quid pro quo*, Altman's refusal to confront Einhorn and say, "[N]o, stop it, I don't do that," or other words of similar import, is persuasive evidence that he acted knowingly and intended for Rosen to avoid subpoena service and/or testify falsely in exchange for financial benefits from Harrison and Blumer.

In the sixth (fifth taped) and last conversation, Altman made the terms of his proposed *quid pro quo* clear. In response to Einhorn's question, "What will we [Harrison and Blumer] get if they do that [*i.e.*, give Rosen severance pay and remove her name from the car leases], she [Rosen] won't cooperate or she won't remember?," Altman stated that they "[p]robably" would get "both" an attempt to avoid service of a subpoena and false testimony if served. In his hearing testimony, Altman did not offer an explanation for why he stated, "[p]robably both," and our *de novo* review of the record reveals none, other than that he intended to extract money and other benefits for Rosen in exchange for her favorable behavior and/or testimony. Given the tenor and substance of Altman's conversations with Einhorn, Altman must have known or believed that if his proposal were consummated, Rosen would have testified falsely in the Harrison Proceeding and undermined the Division's case against Harrison and Blumer.

Altman continued to stall Division staff's efforts to interview Rosen for approximately a month after the last conversation while he waited to hear from Einhorn, to no avail. Altman eventually agreed to make Rosen available for an interview and have her appear for testimony in the Harrison Proceeding, but not until the eve of the resumed hearing, after Rosen had already been subpoenaed, and it was apparent that his attempts to strike a bargain with Harrison and Blumer had failed. Altman's actions in preventing Division staff from obtaining relevant information from Rosen until the eleventh hour before she was required to appear and testify in the Harrison Proceeding is further evidence that he acted knowingly and with a high degree of scienter.

In addition to violating DR 1-102(A)(4), Altman violated DR 1-102(A)(5), prohibiting conduct by an attorney that is prejudicial to the administration of justice. Altman's conduct was prejudicial to the administration of justice in the Harrison Proceeding because it disrupted the orderly and efficient progress of the Harrison Proceeding hearing, led to the impeachment of Rosen and the law judge's rejection of her testimony, and, as Altman himself acknowledged in his briefs on appeal, caused Commission staff to "waste their resources."

Furthermore, Altman violated DR 1-102(A)(7), prohibiting conduct by an attorney that reflects adversely on his fitness to practice law. Altman's conduct reflected adversely on his

fitness to practice law because he sought to trade Rosen's favorable behavior and/or testimony for financial benefits.⁴⁷

C. Altman's Primary Contentions on Appeal.

1. This Rule 102(e) proceeding against him should be dismissed.

Altman argues that this proceeding should be dismissed for a variety of reasons. His first reason is that he was not charged with violating the federal securities laws. A federal securities law violation, however, is not a prerequisite to the initiation of a disciplinary proceeding under Rule 102(e) and Exchange Act Section 4C. Those provisions set forth three independent bases on which the Commission may discipline a person licensed to practice as an attorney: first, when the attorney lacks the "requisite qualifications to represent others"; second, when the attorney lacks "character or integrity" or engages in "unethical or improper professional conduct"; or third, when the attorney willfully violates, or willful aids and abets a violation of, the federal securities laws.⁴⁸

Altman's argument is based on the language from Rule 102(e)(1)(iii) that requires a violation of the federal securities laws or rules or regulations thereunder. The language of Rule 102(e)(1)(iii) does not carry over to Rule 102(e)(1)(ii). The use of the disjunctive "or" indicates that there are alternative bases for bringing Rule 102(e) and Exchange Act Section 4C disciplinary proceedings, and such proceedings are not limited to those attorneys who violate the federal securities laws.

Second, Altman argues that his alleged misconduct did not occur while he was "appearing or practicing" before the Commission. We reject Altman's narrow interpretation of Rule 102's language and find that his argument lacks merit. "[P]racticing before the Commission," as

⁴⁷ New York courts have found violations of DR 1-102(A)(4), (5), and (7) on similar facts and ordered that the attorney be disbarred. *See, e.g., In re Geoghan*, 253 A.D.2d 205, 686 N.Y.S.2d 839 (2d Dept. 1999) (attorney who offered to have his client testify falsely in criminal proceeding in exchange for personal injury settlement violated DR 1-102(A)(4), (5), and (7) and was disbarred); *see also, e.g., In re Gen*, 29 A.D. 3d 230, 813 N.Y.S.2d 78 (1st Dept. 2006) (attorney who offered that his burglary victim client would provide favorable victim's statement, waive civil liability, and refuse to cooperate with district attorney in exchange for \$100,000 payment from burglary defendant's family engaged in conduct prejudicial to the administration of justice that reflected adversely on his fitness to practice law and was disbarred).

⁴⁸ 15 U.S.C. § 78d-3(a)(1)-(3); 17 C.F.R. § 201.102 (e)(1)(i)-(iii).

defined in Rule 102(f), is not a requisite for the applicability of Rule 102(e).⁴⁹ The Commission has previously held that

the text of Rule 102(e)(1) contains no requirement that a person must be appearing or practicing before the Commission at the time of the conduct on which the Commission's findings are based. Rule 102(e)(1) provides that a person may be denied the privilege of appearing or practicing before the Commission once the Commission makes one of three findings: (i) that the person does not possess the requisite qualifications to represent others; (ii) that the person lacks character or integrity or has engaged in unethical or improper professional conduct; or (iii) that the person has willfully violated or willfully aided and abetted the violation of any provision of the federal securities laws or rules and regulations thereunder. Denying the person the privilege of appearing or practicing before the Commission is the authorized remedy once the Commission makes one of the findings specified in Rule 102(e)(1)(i)-(iii); appearing or practicing before the Commission at the time of the misconduct is not the precondition to imposing that remedy.⁵⁰

Even though a finding that Altman was "appearing or practicing" before the Commission while engaging in unethical or improper professional conduct is not required in order for Rule 102(e) to apply to Altman, we conclude that Altman was "appearing or practicing" before the Commission during the relevant period. Altman represented Rosen in relation to the Division's attempts to talk with her as a prospective witness in the Harrison Proceeding, and he spoke to, and exchanged voice mails with, Division staff between January 28 and March 10, 2004, to that end. Altman was Rosen's attorney when Division staff interviewed her by telephone on March 8, 2004 and in-person on the morning of her testimony in the Harrison Proceeding on March 10, 2004. Rosen testified in the Harrison Proceeding that "[e]verything went through [her] attorney," Altman. Thus, at all relevant times, Altman was representing a witness before the Commission, and that conduct constitutes "appearing or practicing" before the Commission. Altman's attempts to distinguish his contacts with Division staff from his contacts with Einhorn do not alter this conclusion because all of those contacts occurred during the course of his representation of Rosen before the Commission. Indeed, it was the specter of his client's testimony in a Commission administrative proceeding that Altman admitted gave him leverage to renew Rosen's requests for financial benefits from Harrison and Blumer.

⁴⁹ Rule 102(f) states that "practicing before the Commission *shall include, but shall not be limited to*: (1) Transacting any business with the Commission; and (2) The preparation of any statement, opinion or other paper by any attorney, accountant, engineer or other professional or expert, filed with the Commission in any registration statement, notification, application, report or other document with the consent of such attorney, accountant, engineer or other professional or expert." 17 C.F.R. § 201.102(f) (emphasis added).

⁵⁰ *Robert W. Armstrong, III*, 58 S.E.C. 542, 574 (2005).

Our conclusion also comports with an important remedial purpose of Rule 102(e), which is for the Commission to "protect the integrity of its own processes."⁵¹ Rule 102(e) "provides the Commission with the means to ensure that those professionals, on whom the Commission relies heavily in the performance of its statutory duties, perform their tasks diligently and with a reasonable degree of competence."⁵² The integrity of the Commission's processes is threatened when an unethical attorney offers to have his client, who is a prospective witness in a Commission administrative proceeding, avoid service of a subpoena or testify falsely in exchange for financial benefits. Disciplining an attorney under Rule 102(e) for such conduct furthers the Rule's remedial purpose of protecting the integrity of the Commission's processes.⁵³

Third, Altman argues that this proceeding should be dismissed because the Commission "has long stated that it did not bring original proceedings against attorney advocates and was not well-equipped to do so, implying that it would not do so." Altman relies on two statements, decades-old, neither of which supports dismissal of this proceeding. The first statement, a 1982 speech by Edward F. Greene, the Commission's then-General Counsel, concerned attorney disciplinary proceedings brought under Rule 2(e), the predecessor to Rule 102(e).⁵⁴ The views expressed by Greene -- regardless of their content -- cannot be attributed to the Commission.⁵⁵ Under the Commission's regulations, staff opinions "do not constitute an official expression of the

⁵¹ See *supra* n.39 and authorities cited therein.

⁵² *Touche Ross & Co.*, 609 F.2d at 582.

⁵³ See *Armstrong*, 58 S.E.C. at 572 (stating that "disciplining accountants pursuant to Rule 102(e) for effecting a fraudulent scheme by computing the figures and providing the information incorporated into Commission filings furthers the Rule's remedial purpose of protecting the integrity of the Commission's processes").

⁵⁴ See <http://www.sec.gov/news/speech/1982/011382greene.pdf>. In the speech, Greene did not state that the Commission lacked authority to bring attorney disciplinary proceedings. Rather, Greene expressed his "initial tentative view" that, "as a general matter," the Commission should bring such proceedings only when an attorney's alleged misconduct is "(I) a violation of established state law ethical or professional misconduct rules, and (ii) has a direct impact on the Commission's internal processes." *Id.* This case involves allegations that Altman's misconduct violated New York's attorney disciplinary rules and directly impacted a Commission administrative proceeding. As a result, it falls within the scope of what Greene considered to be an appropriate basis for an attorney disciplinary proceeding.

⁵⁵ Greene emphasized this point in his speech when he stated, "These, of course, are my personal views and not those of the Commission or the staff." *Id.*

[Commission's] views."⁵⁶ In addition, courts have held that evidence reflecting staff opinions is not relevant in ascertaining the Commission's intent in any given instance.⁵⁷

The second statement, a 1988 Commission release, addressed arguments about the Commission's purported lack of expertise to conduct public Rule 2(e) proceedings. As relevant here, the release stated, "With respect to attorneys, the Commission generally has not sought to develop or apply independent standards of professional conduct."⁵⁸ The release also stated that "the Commission, as a matter of policy, generally refrains from using its administrative forum to conduct *de novo* determinations of the professional obligations of attorneys."⁵⁹ The release did not state that the Commission would not, or could not, conduct a *de novo* determination of an attorney's professional obligations in a Rule 2(e) proceeding. It said the Commission generally did not do so, which the case law shows to be true.

Fourth, Altman argues that, while he "understood that he was bound by New York's disciplinary rules, he could not reasonably have expected that the Commission would seek to enforce those rules in the first instance." Rule 102(e) and its predecessor provisions have been in existence since 1935, giving Altman and other attorneys more than adequate notice of the possibility that the Commission might bring disciplinary proceedings against them based on "unethical or improper professional conduct." That the Commission generally has refrained from initiating this type of proceeding does not deprive it of its authority to do so.⁶⁰ The Sarbanes-

⁵⁶ See 17 C.F.R. § 202.1(d) (stating that, "[w]hile opinions expressed by members of the staff do not constitute an official expression of the Commission's views, they represent the views of persons who are continuously working with the provisions of the statute involved").

⁵⁷ See, e.g., *SEC v. Nat'l Student Mktg. Corp.*, 68 F.R.D. 157, 160 (D.D.C. 1975) (stating that "[t]he SEC consists of five appointed Commissioners who are assisted by staff members. While Commissioners may in fact respect the staff's recommendations, they are not bound by them nor do such recommendations necessarily reflect the position of the agency itself on any given topic. Similarly, the views of an individual Commissioner will not invariably reflect the position of the agency as a whole"), *aff'd*, 538 F.2d 404 (D.C. Cir. 1976) (per curiam), *cert. denied*, 429 U.S. 1073 (1977).

⁵⁸ *Disciplinary Proceedings Involving Professionals Appearing or Practicing Before the Commission*, Exchange Act Rel. No. 25893 (July 7, 1988), 41 SEC Docket 448, 452.

⁵⁹ *Id.*

⁶⁰ See *United States v. Morton Salt Co.*, 338 U.S. 632, 647-48 (1950) (holding that powers granted to FTC had not been "lost by being allowed to lie dormant"); *Cooley v. FERC*, 843 F.2d 1464, 1470 (D.C. Cir.) (stating that "even a prolonged failure to assert an agency power does not destroy it"), *cert. denied*, 488 U.S. 933 (1988).

Oxley Act of 2002 further confirms our application of Rule 102(e) in these circumstances by codifying it substantially verbatim in Exchange Act Section 4C.⁶¹

Finally, Altman argues that this proceeding should be dismissed because it is not "reasonable that the Commission may apply different standards of professional conduct to attorneys who are located in different jurisdictions with different rules." Beyond this bare assertion, Altman provides no legal or factual support for his argument. In any event, we believe that Altman's conduct was of the type which "all responsible attorneys would recognize as improper for a member of the profession."⁶²

2. Altman did not intend to exchange Rosen's substantive testimony for financial benefits.

Altman argues that he did not intend to exchange Rosen's substantive testimony for financial benefits because he never spoke to Rosen about the substance of his conversations with Einhorn. This argument fails on its face because Altman was purporting to act on Rosen's behalf. Moreover, Altman offers no evidence to buttress this argument, aside from his own discredited testimony in this proceeding and Rosen's unreliable testimony in the Harrison Proceeding. Furthermore, even if Altman had kept the substance of the conversations to himself, such conduct does not establish a lack of intent to consummate the transaction. We have found that Altman's taped statements indicate that he must have known or believed Rosen would uphold her end of the agreement, and he would live up to the promises he made to Einhorn, if Rosen was paid. Indeed, no other plausible explanation exists for Altman's communications with Einhorn.

Altman also argues that he did not intend to exchange Rosen's substantive testimony for financial benefits because he had no further conversations with Einhorn after February 10, 2004; those conversations did not result in any agreement; and he and Rosen cooperated with Division staff. These facts demonstrate only that Altman failed to convince Harrison and Blumer to agree to his proposal. They do not establish that he lacked the intent to follow through with it.

⁶¹ See *Armstrong*, 58 S.E.C. at 571 n.61 (stating that "Congress embraced our application of Rule 102(e) by codifying the rule substantially verbatim in Section 4C of the Exchange Act as a result of the Sarbanes-Oxley Act of 2002"; stating further that "when Congress revisits a statute giving rise to a longstanding administrative interpretation without pertinent change, the 'congressional failure to revise or repeal the agency's interpretation is persuasive evidence that the interpretation is the one intended by Congress'") (quoting *CFTC v. Schor*, 478 U.S. 833, 846 (1986)).

⁶² *Zauderer v. Office of Disciplinary Counsel*, 471 U.S. 626, 666 (1985) (Brennan, J., concurring in part and dissenting in part) (quoting *In re Ruffalo*, 390 U.S. 544, 550 (1968) (White, J., concurring)).

Altman attempts to further this argument by asserting that Division staff already knew the information she had, making her testimony "unchangeable." The Division had only second-hand, or perhaps third-hand, hearsay information about Rosen's testimony. Such information was not perpetuated sworn testimony and was subject to change, modification, or expansion upon further reflection.⁶³

3. The law judge's findings regarding Altman's alcohol abuse were erroneous.

Altman, who admits he suffers from alcohol abuse, argues that the law judge erred in finding that he was not impaired by alcohol in any of his telephone conversations with Einhorn and that his alcohol abuse did not affect his conduct. According to Altman, the evidence shows that he drank most evenings during the relevant period; he had been drinking before at least the last conversation with Einhorn; and years earlier he told his therapist that he had been drinking before that last conversation.

The record shows that alcohol abuse did not cause Altman's conduct or prevent him from forming the intent necessary to engage in the alleged violations. Altman testified that, despite his drinking, he was able to work and was "functioning" at all relevant times. Altman testified that when he was drinking heavily, he had a higher tolerance for alcohol and no loss of functioning at his job that would be noticeable to others. Altman reported he had no blackouts, memory lapses, seizures, or other withdrawal symptoms related to alcohol.

Significantly, Altman testified that he did not claim that he was intoxicated during any of his telephone conversations with Einhorn, nor did he claim that his taped statements were made as a result of alcohol consumption or because he was intoxicated. This testimony was supported by the testimony of OGC's expert witness, who concluded that Altman was not intoxicated or impaired during his conversations with Einhorn. Neither of Altman's two experts contradicted that conclusion. The only evidence that Altman relies on to show that his alcohol abuse contributed, in some unspecified way, to his conduct comes from his own self-serving testimony. As discussed, the law judge rejected that testimony because she found that Altman was not a believable witness.

Altman disputes the law judge's finding that he "changed his position" on the subject of his alcohol abuse because he did not raise it as a defense until his post-hearing brief before the law judge. But Altman does not dispute that he made no claim in his investigative testimony, Wells submission, answer to OGC's order instituting this Rule 102(e) proceeding, or hearing testimony

⁶³ Cf. *IBM Corp. v. Edelstein*, 526 F.2d 37, 41 (2d Cir. 1975) (per curiam) (stating that "[i]t is the common experience of counsel at the trial bar that a potential witness, upon reflection, will often change, modify or expand upon his original statement and that a second or third interview will be productive of greater accuracy. Little wonder then that a witness being interviewed . . . would not wish to have his initial thoughts taken down by a court reporter as if it were sworn testimony").

that he was intoxicated during any of his conversations with Einhorn, or that any of his statements to Einhorn were caused by his alcohol consumption.

Altman also argues that he "operated at a distinct disadvantage" in his conversations with Einhorn because, among other things, he was "careless," "distracted," and "sometimes had impaired mental faculties." Altman offers no evidence that his carelessness, inattentiveness, or "impaired mental faculties" caused his misconduct. Indeed, he admitted in his post-hearing brief that he did not suffer from any mental condition that caused him to commit the alleged violations, prevented him from forming the intent necessary to do so, or mitigated his responsibility for his own conduct.

4. The law judge improperly relied on OGC's expert's testimony.

Altman argues that the law judge erred in admitting OGC's expert's testimony, except for the expert's diagnosis of alcohol abuse, because such testimony was "irrelevant, often highly prejudicial, and much of it invaded the exclusive provinces of the judge and attorneys." Rule of Practice 320 provides that law judges "may receive relevant evidence and shall exclude all evidence that is irrelevant, immaterial or unduly repetitious."⁶⁴ Law judges have broad discretion in deciding whether to admit evidence, including expert testimony.⁶⁵ Having reviewed the report of OGC's expert, we conclude that the law judge did not abuse her broad discretion in admitting portions of it.

Altman also argues that the law judge erred in relying on the excluded or sealed portions of OGC's expert's testimony. We find no support in the record for this argument and, in fact, find the opposite to be true. In her initial decision, the law judge expressly stated, "I have not relied on [OGC's] expert[s] opinions, which are unrefuted and which I find to be accurate, because, except for [OGC's expert's] public finding that Altman was not intoxicated during the phone conversations, they do not impact Altman's conduct that is the basis for this proceeding."⁶⁶

IV.

The remedial sanctions available to the Commission in Rule 102(e) and Exchange Act Section 4C attorney disciplinary proceedings include a censure, temporary suspension, and permanent disqualification from practice before the Commission.⁶⁷ OGC requests that we permanently deny Altman the privilege of appearing or practicing before us, to protect the

⁶⁴ 17 C.F.R. § 201.320.

⁶⁵ *See, e.g., Pagel, Inc.*, 48 S.E.C. 223, 230 (1985).

⁶⁶ *Altman*, 94 SEC Docket at 13464 n.42.

⁶⁷ 17 C.F.R. § 201.102(e)(1); 15 U.S.C. § 78d-3(a).

integrity of our processes and deter similar misconduct.⁶⁸ In determining the appropriate remedial sanction, we are guided by the public interest factors in *Steadman v. SEC*:⁶⁹ the egregiousness of the respondent's actions; the isolated or recurrent nature of the infraction; the degree of scienter involved; the sincerity of the respondent's assurances against future violations; the respondent's recognition of the wrongful nature of his conduct; and the likelihood of future violations.⁷⁰ We also consider deterrence as a factor.⁷¹ Our inquiry into the appropriate remedial sanction "is a flexible one, and no one factor is dispositive."⁷²

Altman's conduct was egregious, recurrent, and reflected a high degree of scienter.⁷³ By suggesting that Rosen, a potential Division witness in the Harrison Proceeding, would evade the

⁶⁸ Our authority to increase the sanction imposed by the law judge is set forth in Rule of Practice 411(c), which provides that "[t]he Commission may affirm, reverse, modify, set aside, or remand for further proceedings, in whole or in part, an initial decision by a hearing officer and may make any findings or conclusions that in its judgment are proper and on the basis of the record." 17 C.F.R. § 201.411(a).

⁶⁹ 603 F.2d 1126 (5th Cir. 1979), *aff'd on other grounds*, 450 U.S. 91 (1981); *see Herbert M. Campbell, II, Esq.*, Initial Decision Rel. No. 266 (Oct. 27, 2004), 83 SEC Docket 4000, 4009 (ALJ decision) (applying *Steadman* factors in proceeding under Rule of Practice 102(e)), *declared final*, Exchange Act Rel. No. 50906 (Dec. 22, 2004), 84 SEC Docket 1943.

⁷⁰ *See Steadman*, 603 F.2d at 1140.

⁷¹ *See, e.g., McCarthy v. SEC*, 406 F.3d 179, 190 (2d Cir. 2005) (noting that deterrent value is a relevant factor in deciding sanctions); *Ahmed Mohamed Soliman*, 52 S.E.C. 227, 231 n.12 (1995) (stating that selection of an appropriate sanction involves a consideration of several elements, including deterrence); *Lester Kuznetz*, 48 S.E.C. 551, 555 (1986) (noting that the sanction of a bar serves the purpose of general deterrence).

⁷² *David Henry Disraeli*, Exchange Act Rel. No. 57027 (Dec. 21, 2007), 92 SEC Docket 852, 875, *petition denied*, 334 Fed. Appx. 334 (D.C. Cir. 2009). Contrary to Altman's argument, we are not required to choose the "least onerous" of sanctions available. *See, e.g., Paz Securities, Inc. v. SEC*, 566 F.3d 1172, 1176 (D.C. Cir. 2009) (stating that the SEC was not required to choose "the least onerous" of sanctions provided sanctions imposed were "remedial and not excessive or oppressive"); *see also, e.g., Kornman v. SEC*, 592 F.3d 173, 188 (D.C. Cir. 2010) (rejecting argument that the SEC must show why action less severe than permanent bar would not protect investors).

⁷³ Altman argues that the law judge "unreasonably discount[ed]" the "stresses" he was suffering at the time of his misconduct, namely, his difficulties in dealing with his ex-wife and his desire to spend time with his children who lived with her. The record fails to support Altman's argument that stress caused his misconduct.

Division's service of a subpoena and/or falsely claim at the hearing not to remember certain facts damaging to Harrison and Blumer in exchange for a financial package, Altman knowingly and intentionally offered to subvert a Commission administrative proceeding for his client's gain, and violated his fundamental ethical obligations as a New York bar member. Altman's conduct was recurrent because it took place in a series of telephone conversations with Einhorn over a two-week period and in communications with Division staff between January 28 and March 10, 2004.

Altman has not made any meaningful assurances against future violations, nor has he recognized the wrongfulness of his conduct. Although Altman apparently admits that it is inappropriate for an attorney to agree to have a witness testify falsely in exchange for payment, and although Altman acknowledges that it was wrong to make his "[p]robably both" statement in the last taped conversation with Einhorn,⁷⁴ he denies that he ever actually sought to exchange false testimony for payment, despite his having been captured on tape doing so. Altman's unwillingness or inability to acknowledge that he committed intentional ethical violations, even when confronted with such compelling evidence, demonstrates that he can provide no assurance that he will refrain from future violations.

Furthermore, Altman's occupation as a commercial litigator makes future violations likely.⁷⁵ A significant failure to perform properly the professional's role has implications extending beyond the particular transaction involved, for wrongdoing by a lawyer . . . raises the spectre of a replication of that conduct with other clients."⁷⁶

Altman argues that OGC must make a "strong showing" that future violations are likely because a substantial suspension from Commission practice can carry with it severe collateral consequences, "likely" including his suspension from the practice of law in New York for an equivalent amount of time and further damage to his reputation and legal practice. Altman points to no case law which supports his position. We see no basis for applying such a heightened standard here.

Altman argues that his "main concern in these proceedings is not his ability to practice before the Commission -- something he has done rarely and will most likely never do again -- but rather

⁷⁴ On appeal, Altman trivializes this statement by characterizing it as "simply a thoughtless answer to a very loaded question" that "had no more real meaning to him than does a parent's 'maybe' to an insistent child."

⁷⁵ See *Campbell*, 83 SEC Docket at 4009-10 (permanently denying attorney, who was enjoined from violating the federal securities laws, the privilege of appearing or practicing before the Commission, because, among other reasons, he could continue practicing commercial law); *Chris G. Gunderson*, Exchange Act Rel. No.61234 (Dec. 23, 2009), 97 SEC Docket 24040, 24050 & n.43 (same) (citing *Campbell*).

⁷⁶ *Carter*, 47 S.E.C. at 477.

the catastrophic collateral consequences of a lengthy suspension or permanent ban and particularly the effect it will have on New York disciplinary authorities." We are mindful of potential collateral consequences that may result from our decision in this case. We also heed the appellate court's admonition in *Kivitz v. SEC*⁷⁷ that an attorney's license to practice "cannot lightly or capriciously be taken from him."⁷⁸ Nevertheless, we have recognized that "[a]n incompetent or unethical practitioner has the ability to inflict substantial damage to the Commission's processes, and thus the investing public, and to the level of trust and confidence in our capital markets."⁷⁹ We have warned that "where such individuals engage in professional misconduct which impairs the integrity of the Commission's processes, the Commission has an obligation to respond through the application of" Rule 102(e).⁸⁰

Based on our consideration of the public interest factors and the factual circumstances presented,⁸¹ we conclude that permanently denying Altman the privilege of appearing or practicing before us serves the public interest and is remedial because it will protect the integrity of our prosecutorial and adjudicatory processes, and thereby the investing public, from future harm by Altman.⁸² Altman's professional misconduct undermined the effectiveness of the

⁷⁷ 475 F.2d 956 (D.C. Cir.1973).

⁷⁸ *Id.* at 962.

⁷⁹ *Keating, Muething, & Klekamp*, 47 S.E.C. 95, 120 (1979) (concurring opinion).

⁸⁰ *Id.*

⁸¹ Altman argues that several factors mitigate his conduct (*e.g.*, he suffers from alcohol abuse, has obtained treatment, and is now in recovery; he stopped communicating with Einhorn a month before the Harrison Proceeding hearing resumed; he never told Rosen about the substance of his conversations with Einhorn; he had a clean disciplinary record before the events at issue; he has practiced law without incident in the years following the institution of this Rule 102(e) proceeding; he did not profit financially from his conduct; his conduct did not cause "material harm" because the Division won its case in the Harrison Proceeding; and OGC began its investigation in 2004 but waited until 2008 to charge him). None of these factors mitigates his egregious misconduct. *See, e.g., Kornman*, 592 F.3d at 187-88 (rejecting as mitigating factors the lack of a disciplinary history, personal regret about the misconduct and vow not to engage in such misconduct again, and the absence of harm to Commission or public); *Janet Gurley Katz*, Exchange Act Rel. No. 61449 (Feb. 1, 2010), 97 SEC Docket 25074, 25109-10 & n.66 (collecting cases) (rejecting lack of profit as mitigating factor); *Armstrong*, 58 S.E.C. at 579 (rejecting delay in instituting proceeding as mitigating factor in absence of prejudice).

⁸² Altman suggests that, in lieu of a suspension or disqualification, the Commission "condition Mr. Altman's practice on his continued participation in recovery programs, including (continued...)

Commission's enforcement of the federal securities laws in the Harrison Proceeding. Because Altman's actions are fundamentally repugnant to the integrity of the Commission's administrative processes, he must not be permitted to be in a position to engage in professional misconduct in a Commission proceeding again. Other attorneys, who might be encouraged by a more lenient sanction to act in a similar fashion, must also be deterred.

An appropriate order will issue.⁸³

By the Commission (Chairman SCHAPIRO and Commissioners CASEY, WALTER, AGUILAR and PAREDES).

Elizabeth M. Murphy
Secretary

⁸² (...continued)

the New York City Bar Association Lawyer Assistance Program, for a period of years, or on other conditions that the Commission could monitor by means of periodic reports from medical professionals or others." Altman points to no authority for our imposing such a requirement, and we are aware of none.

⁸³ We have considered all of the parties' contentions. We have rejected or sustained them to the extent that they are inconsistent or in accord with the views expressed in this opinion.

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Rel. No. 63306 / November 10, 2010

Admin. Proc. File No. 3-12944

In the Matter of

STEVEN ALTMAN, ESQ.

c/o Jeffrey C. Hoffman, Esq.
Hoffman & Pollok LLP
260 Madison Avenue
22nd Floor
New York, NY 10016

ORDER IMPOSING REMEDIAL SANCTIONS

On the basis of the Commission's opinion issued this day, it is

ORDERED that Steven Altman be, and he hereby is, permanently denied the privilege of appearing or practicing before the Commission.

By the Commission.

Elizabeth M. Murphy
Secretary