SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 10-403
District Docket No. XIV-2007-0408E

IN THE MATTER OF	:
PATRICE MERRITT DAVIS	:
AN ATTORNEY AT LAW	:

Decision

Argued: February 17, 2011

Decided: May 16, 2011

Walton W. Kingsbery, III appeared on behalf of the Office of Attorney Ethics.

Raymond M. Brown appeared on behalf of respondent.

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

This matter came before us on a disciplinary stipulation between respondent and the Office of Attorney Ethics (OAE). Respondent stipulated to violating RPC 8.4(b) (committing a criminal act that reflects adversely on an attorney's honesty, trustworthiness or fitness as a lawyer). The OAE and respondent agreed that a one-year suspension is appropriate. For the reasons stated below, we, too, agree that a one-year suspension is the proper discipline for respondent's conduct.

Respondent was admitted to the New Jersey bar in 1988. She has no history of discipline.

On February 3, 2011, respondent's counsel filed a motion for a protective order sealing Exhibits B and E to respondent's brief. Counsel argued, among other things, that there was little public or private interest in disclosing the confidential information in either exhibit.

By letter dated February 4, 2011, the OAE did not object to the entry of a protective order as to Exhibit B, but objected to sealing Exhibit E, respondent's curriculum vitae, noting that it recited her history of employment, education, publications and professional achievements, rather than "exceptional" information, as contemplated by the rule governing protective orders.

R. 1:20-9(h) provides:

> In exceptional cases, protective orders may be sought to prohibit the disclosure of specific information to protect the interests of a . . . respondent. [F]or good cause shown . . . the Board . . . may issue issue the protective order.

Respondent did not explain why her curriculum vitae, or any part of it, should be sealed, nor did she demonstrate why that information was "exceptional" and, as such, should be sealed. We, therefore, deny her application as to her curriculum vitae,

but grant it as to Exhibit B to her brief. A protective order is annexed to this decision.

According to the disciplinary stipulation, respondent is not currently engaged in the private practice of law, but is employed as an Associate Professor at a New Jersey county college. Her legal employment history consists of the following: October 1999 through January 2004 - Chief Assistant Prosecutor, Essex County Prosecutor's Office; 1989 through 1999 – Director, Juvenile Trial Division, Essex County, Prosecutor's Office; 1988 to 1989 – Chief, Environmental Crimes Unit, New York County District Attorney's Office; and 1980 to 1988 - Assistant District Attorney, New York County District Attorney's Office.

On January 4, 2007, Criminal Complaint Mag. No. 07-8002 was filed against respondent. Attachment A to the complaint stated that, on or about April 23, 2003, respondent

> did knowingly and willfully utter and publish as true a false, forged, altered and counterfeited writing, with intent to defraud the United States, knowing the same to be false, forged, altered and counterfeited.
> In violation of Title 18, United States Code, Sections 495 and 2.
>
> [Att.A.][1]

[1] Att.A refers to attachment A to the criminal complaint.

Attachment B to the criminal complaint sets forth the facts underlying this disciplinary matter.

In August 2001, the Internal Revenue Service (IRS) filed two liens against respondent's residence, in South Orange, New Jersey. The first lien stemmed from unpaid individual federal income taxes in respondent's and her husband's name, totaling approximately $3,480 for tax year 1993. The lien was recorded in book 142, page 526 of the Essex County Register. The second lien arose out of respondent's husband's tax year 1996 unpaid individual federal income taxes, totaling $9,916, recorded in book 142, page 527 of the Essex County Register.

On or about March 5, 2002, after payment was made to the IRS for the 1996 tax year, "a Certificate of Release of Federal Tax Lien was recorded at the Essex County Register's Office reflecting that the 1996 Lien should be lifted." The Certificate of Release was signed by IRS employee "W.B."

On March 31, 2003, respondent submitted a request for refinance rates through Lending Tree, an online facilitator for loan applications. On April 10, 2003, respondent and her husband signed a loan application with Nations Home Mortgage Corporation (Nations) for a $275,000 mortgage for "the Davis Residence."

American Home Title Agency (American), the title agency that reviewed titles for Nations, discovered the 1993 tax lien.

On April 22, 2003, American requested a pay-off figure from the IRS for the 1993 lien. On that same day, a Nations' loan officer informed respondent that the title search had uncovered the IRS lien. Respondent, too, contacted the IRS. She was told that the pay-off figure was $5,780.

Thereafter, respondent submitted to Nations a false Certificate of Release of Federal Tax Lien to show that she purportedly had paid off the amounts due to the IRS. The certificate indicated that the lien had been recorded in book 142, page 527, which was the same information for the 1996 lien. In addition, respondent listed W.B. as the officer who had signed the certificate of release. On April 23, 2003, respondent filed with the Essex County Register the certificate of release for the 1993 lien.

In May 2003, the president of American discovered a discrepancy between the certificate of release for the 1993 lien and IRS records. When he contacted the IRS, he discovered that the lien was still in effect. He then informed respondent of his discovery that the certificate of release was false.

On or about May 14, 2003, respondent contacted an IRS insolvency advisor, admitted that she had filed a lien release in the Essex County Courthouse, and stated "I want to make this right, what can I do to stop any further investigation."

Respondent then obtained the pay-off amount, $5,780, and, on the same day, satisfied the lien. A "recording officer" issued a "legitimate" certificate of release.

On August 7, 2003, respondent met with two agents from the Office of the Treasury Inspector General for Tax Administration. At that time, she claimed that "an individual identified as T.M. was acting on her behalf with the IRS and provided her with the false certificate of release of the 1993 lien." She claimed that a power-of-attorney document to T.M. was at her home.

On August 25, 2003, respondent provided the IRS agents with the power-of-attorney purportedly signed by T.M. Although the date typed on the document was "9/18/01," the date on the signature line was "9/18/03." When confronted with that discrepancy, respondent

> immediately reached to grab back the power of attorney form. She wrote on the form that the document was originally undated and she was simply trying to fill in the dates, which is why she wrote the then-current year, 2003, and not 2001. Confronted with the discrepancy in the dates, [respondent] stated "I do not make a good criminal, do I."
>
> [Att.B¶11.][2]

As to the criminal charges, respondent applied for and was accepted into Pretrial Diversion, under F.R.C.P. 48(a). On March

[2] Att.B refers to Attachment B to the criminal complaint.

25, 2008, she entered into an Agreement for Pretrial Diversion. She did not enter a guilty plea and was not convicted of a crime.

On July 7, 2008, in accordance with the terms of the agreement, the Honorable Madeline Cox Arleo, U.S.M.J., entered an order for the dismissal of the complaint, without prejudice.

In connection with the OAE's investigation, respondent submitted a statement, admitting, among other things, that she had "filed and submitted a false Certificate of Release of Federal Tax Lien" to Nations in connection with an application for a personal loan. She stated:

> I know that my conduct was wrong and I deeply regret my actions.
> Although I know it does not excuse or justify my actions, I would like to note that my conduct was heavily influenced by the fact that I had endured a long history of continued disagreements and conflicts with the IRS.
>
> [S5¶II;Ex.D.][3]

According to respondent, at the time that she submitted the release, she thought that the IRS was mistaken in its belief that she owed it money. The foundation for her belief was a history of confusion that she had experienced with the IRS. Specifically, respondent asserted that, because she did not

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[3] S refers to the disciplinary stipulation.

assume her husband's last name when they were married, the IRS sent her annual notices stating that her returns had not been filed. Respondent wrote:

> In closing, I would like to stress that this lapse in judgment related to a personal financial matter and had nothing to do with clients or my career. Further, I have not engaged in private practice or ever been retained by a client [sic]. Although I am not currently practicing law, I recognize that my conduct was wrong and I am deeply regretful. I am willing to deal with the consequences of my actions and look forward to putting this mistake behind me.
>
> [SEx.D.]

The stipulation stated that, at the time that respondent submitted the lien document, she believed that, "while not an authentic document, [it] represented a true state of affairs."

Citing In re McLaughlin, 105 N.J. 457, 461 (1987), In re Magid, 139 N.J. 449, 445 (1995), and In re Bock, 128 N.J. 270, 275 (1992), the OAE's brief highlighted, as an aggravating factor, that, during the time of her criminal conduct, respondent held a public office. She served as the Chief Assistant Prosecutor at the Essex County Prosecutor's Office from October 1999 to January 2004.

As to mitigating factors, the OAE's brief noted that respondent had no prior discipline; that her misconduct did not involve the practice of law; that no clients were harmed; that

she accepted responsibility for her conduct; and that she cooperated fully with the ethics investigation.

In his brief to us, respondent's counsel also advanced what he termed "significant mitigating factors:" that respondent had no disciplinary history; that the conduct was an isolated incident of aberrant behavior; that respondent cooperated with the OAE investigation and demonstrated remorse for her conduct; that she believed that the IRS was mistaken about the debt; that the release that she prepared represented "a true state of affairs;" that the conduct was unrelated to the practice of law; that respondent was an active, involved, and valuable member of the community; and that her behavior was not likely to be repeated.

Counsel outlined respondent's career and appended her curriculum vitae. Respondent attended Harvard Law School and worked in the public sector for many years. During those years, she oversaw many significant programs, lectured, moderated and presented at various programs, conducted training, and supervised legal and non-legal staff. She also authored a manual on the juvenile justice system. Counsel also noted, that respondent had co-authored a report studying the Essex County juvenile justice system, for which she had received praise.

Following a full review of the stipulation, we are satisfied that the facts contained therein fully support a finding that respondent was guilty of unethical conduct, specifically, a violation of RPC 8.4(b).

Respondent's conduct was not an isolated incident. Although she claimed that she was frustrated with the IRS over years of problems with it, rather than try to resolve those problems, she engaged in fraudulent conduct: (1) she submitted to Nations a false Certificate of Release of Federal Tax Lien; (2) she filed the false release with the Essex County Register; (3) after she was caught, she paid off the lien, but misrepresented to treasury agents that T.M., an individual acting on her behalf, had provided her with the false certificate of release and that T.M. held a power-of-attorney, and (4) she created a false power-of-attorney.

The only issue left for our consideration is the proper quantum of discipline. The discipline imposed on individuals who have altered or created false documents has ranged from an admonition to a significant period of suspension. See, e.g., In re Lewis, 138 N.J. 33 (1994) (admonition for attempting to deceive a court by introducing into evidence a document falsely showing that a heating problem in an apartment of which the attorney was the owner/landlord had been corrected prior to the

issuance of a summons); In re Ginsberg, 174 N.J. 349 (2002) (attorney reprimanded for backdating estate planning documents to avoid possible adverse consequences by newly proposed legislation; had the legislation been passed, the attorney's conduct would have constituted tax fraud; in mitigation, we considered that the attorney was forthright and contrite in his admission of wrongdoing, was not motivated by self-gain, caused no harm to the clients, and had a spotless disciplinary record until the incident; the passage of thirteen years since the misconduct was also a significant mitigating factor); In re Sunberg, 156 N.J. 396 (1998) (reprimand for attorney who created a phony arbitration award to mislead his partner and then lied to the OAE about the arbitration award; mitigating factors included the passage of ten years since the occurrence, the attorney's unblemished disciplinary record, his numerous professional achievements, and his pro bono contributions); In re Bar-Nadav, 174 N.J. 537 (2002) (three-month suspension for attorney who submitted two fictitious letters to the district ethics committee in an attempt to justify his failure to file a divorce complaint on behalf of a client; the attorney also filed a motion on behalf of another client after his representation had ended and failed to communicate with both clients); In re Rinaldi, 149 N.J. 22 (1997) (three-month suspension for attorney

who did not diligently pursue a matter, made misrepresentations to the client about the status of the matter, and submitted three fictitious letters to the ethics committee in an attempt to show that he had worked on the matter); In re Telson, 138 N.J. 47 (1994) (six-month suspension for attorney who altered a court document to conceal the fact that a divorce complaint had been dismissed; thereafter, he submitted the uncontested divorce to another judge, who granted the divorce; the attorney then denied to a third judge that he had altered the document); In re White, 191 N.J. 553 (2007) (one-year suspension for attorney who, while attending law school, forged another's signature on a $54,000 student loan application for herself; criminal charges were dismissed after the attorney's successful completion of PTI; mitigating factors included that substantial time had passed since the incident, that the attorney was not yet admitted to the bar, that she had no ethics history, that she cooperated with law enforcement and ethics authorities, that she exhibited remorse, and that she paid off the loan; aggravating factors included the large sum involved and the attorney's taking advantage of a friend/coworker); In re Marshall, 165 N.J. 27 (2000) (attorney suspended for one year for backdating a stock transfer agreement and stock certificate to assist the client in avoiding the satisfaction of a $500,000 judgment; the

attorney claimed a belief that he was memorializing a transaction that had taken place four years before; the attorney also stood silent at the client's deposition when the client falsely testified that the documents had been signed four years before; the attorney did not disclose the backdating to the court and to his adversary in a lawsuit to set aside the transfer of the stock); In re Hall, 195 N.J. 187 (2007) (retroactive eighteen-month suspension for attorney who backdated an appeal to cover up his failure to file it timely; the attorney also made misrepresentations to the client, to the adversary, and to a referee); In re Salamanca, 204 N.J. 590 (2011) (two-year retroactive suspension for attorney who pled guilty to one count of document fraud; the attorney prepared and submitted several applications for alien employment on behalf of his clients, knowing that the statements were false); In re Silberberg, 144 N.J. 215 (1996) (two-year suspension for attorney who witnessed and notarized the "signature" of a person whom he knew was deceased; the attorney then provided two false written statements to ethics authorities about the circumstances leading to the execution of the documents); and In re Penn, 172 N.J. 38 (2002) (in a default matter, three-year suspension imposed on attorney who failed to file an answer in a foreclosure action, thereby causing the entry of default against

the client; thereafter, in order to placate the client, the attorney lied that the case had been successfully concluded, fabricated a court order, and signed the name of a judge; the attorney then lied to his adversary and to ethics officials; the attorney also practiced law while ineligible).

We find that the circumstances of this case are analogous, but more serious than in the Telson case (six-month suspension). Telson altered a court document to conceal a dismissal of a divorce complaint, then submitted the uncontested divorce to another judge and later denied to a third judge that the lawsuit had been dismissed. In this case, respondent, too, engaged in an ongoing fraud, although on a federal agency, instead of a court.

In aggravation, respondent was vested with a position involving public trust at the time, a factor that elevates the seriousness of her offenses. In re Magid, 139 N.J. 449, 455 (1995).

The mitigating factors present here, lack of an ethics history, admission of wrongdoing, contrition, and the fact that the conduct was caused by a lapse in judgment due to problems that respondent was facing at the time, make this case somewhat less serious than Hall's (eighteen-month retroactive suspension for attorney who backdated an appeal) because no client was harmed in this case.

Based on the totality of the circumstances and guided by precedent, we find that a one-year suspension is appropriate here, a measure of discipline with which both the OAE and respondent are in agreement.

Member Baugh voted to impose a six-month suspension.

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

Disciplinary Review Board
Louis Pashman, Chair

By: Julianne K. DeCore
Julianne K. DeCore
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Patrice Merritt Davis
Docket No. DRB 10-403

Argued: February 17, 2011

Decided: May 16, 2011

Disposition: One-year suspension

Members	Six-month Suspension	One-year Suspension	Reprimand	Dismiss	Disqualified	Did not participate
Pashman		X				
Frost		X				
Baugh	X					
Clark		X				
Doremus		X				
Stanton		X				
Wissinger		X				
Yamner		X				
Zmirich		X				
Total:	1	8				

Julianne K. DeCore
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Chief Counsel