SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 91-117

IN THE MATTER OF	:
KENNETH S. MEYERS,	:
AN ATTORNEY AT LAW	:

Decision and Recommendation
of the
Disciplinary Review Board

Argued: June 19, 1991

Decided: July 29, 1991

Christopher M. Howard appeared on behalf of the District XII Ethics Committee.

Kenneth J. Grispin appeared on respondent's behalf.

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

This matter is before the Board based upon a presentment filed by the District XII Ethics Committee (DEC). The formal ethics complaint charged respondent with lack of diligence and gross neglect in a matrimonial case; failure to keep his client reasonably informed about the status of the matter; failure to obtain a written fee agreement; deceit and misrepresentation; and lack of candor toward a tribunal.

Respondent was admitted to the New Jersey bar in 1972. He is a member of the law firm of Nichols, Thomson, Peek and Meyers, in Westfield, New Jersey.

In 1985, respondent was retained by Ann M. Edison to institute a divorce action in her behalf. Although there was some later

activity on the matter, by way of respondent's negotiations with opposing counsel on a property settlement agreement, respondent never filed the complaint for divorce.

By respondent's own testimony, Edison was not a difficult client. To the contrary, she "never kept after him" or asked questions about the case. This was so, according to respondent, because there were no critical issues to be resolved in the divorce matter: the parties had separated in April 1985; Edison was not seeking alimony because she was the family's primary source of financial support; the major asset of the marriage, the marital home, had been purchased with Edison's funds; she had been responsible for the mortgage payments; all Edison was seeking, by way of equitable distribution, was to have title to the house transferred to her; and the net equity in the house was only $1,000 to $2,000. Furthermore, Edison and her husband had agreed that she would have custody of their eight-year old son. In view of the foregoing, respondent recounted, there was no sense of urgency in the resolution of the divorce matter, a feeling apparently shared by Edison.

This fact notwithstanding and in spite of not having filed a complaint, for some inexplicable reason respondent prepared and presented to Edison a fictitious judgment of divorce, dated November 30, 1987. The document bore the false signature of the Honorable Paul T. Murphy, J.S.C. and a docket number of another

matter that respondent was handling (Exhibit J-1).[1] One of its provisions called for the incorporation of ". . . the written agreement entered into between the parties dated August 8, 1985 and marked J-1 in evidence . . . ."

At the DEC hearing, respondent admitted that there was no such agreement. He explained that, although there had been some negotiations toward that end and although a draft agreement had been submitted to Edison, the parties had not reached an agreement. Edison, however, did not question respondent in that regard.[2]

Respondent offered no plausible explanation for his preparation of a false judgment of divorce:

> As far as that judgment was concerned, I have done soul-searching for a long time as to why I could conceivably have done that, or what was going through my mind at the time, or why I did that. Partially, it was an attempt to -- well, it grew out of the fact that the original complaint was not filed in 1987 because, as I said, she never called. There was no sense of emergency, or urgency, I should say, and things just got out of hand.
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> At the time in 1987 when this occurred, professionally and privately I was under a lot of strain. Professionally I was devoting almost all my time to one particular client that was making a major acquisition from Textron Industries, and it was a very, very difficult situation, and I think I was working almost full time on that. I never billed Mrs. Edison or received any retainer or anything else throughout the entire period through the present time.

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[1] Although the record is silent as to who signed the judge's name, it is presumed that respondent himself did so inasmuch as he conceded that he had prepared the document.

[2] Respondent testified that, even though Edison was bright --- she worked as a research scientist -- she appeared to "live in her own world".

> She was an unusual client in that she never questioned why she wasn't getting billed. She never questioned why there was no equitable distribution after the initial "divorce", or why there was never any deed put into her name or anything else.
>
> I don't want to mislead the Committee, but it was almost the feeling that, you know, it was just -- at least at that time, maybe until she finally got another divorce decree, that she wasn't particularly concerned about that. As I had indicated, I rarely got phone calls from her.
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> Obviously, as the Committee could tell from reading things or by my own admissions, the judgment was just to, in a sense, buy time or, you know, get her off my back at that particular moment, with the idea that, all right, there isn't much involved, and there are no big issues, and I'll get this thing straightened out.
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> As things like this do, it just got worse rather than ever, you know, ever getting done to set things right.
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> [T48,49,50][3]

In March 1989, Edison's husband filed a complaint for divorce. He was represented by Steven F. Satz, an associate in the firm of Busch and Busch. On April 26, 1989, respondent acknowledged service of the complaint. After Satz agreed to sign a stipulation extending the time to file the answer, respondent entered an appearance in Edison's behalf on July 28, 1989. According to respondent, Edison knew that there were certain court proceedings pertaining to the divorce; she did not know, however, that they consisted of an action for the dissolution of the marriage. Respondent had told her that her husband had filed an "action for a re-examination of the issue of equitable distribution."

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[3] T denotes the transcript of the DEC hearing on February 6, 1991.

For the next three months, there was a succession of letters from the senior intake officer at the family case manager's office, advising both counsel that failure to submit the various documents requested would result in the dismissal of the complaint or appearance. Each time, respective counsel complied with the intake officer's directive. One of those documents consisted of a custody/visitation fact sheet (Exhibit J-2A), on which respondent signed Edison's name. At the DEC hearing, respondent admitted having signed her name, but contended that he had done so with Edison's knowledge and consent.

On October 30, 1989, the intake officer again notified respondent that the appearance was scheduled to be dismissed on November 9, 1989 for his failure to submit one of the documents listed on her August 4, 1989 letter. On November 9, 1989, the court dismissed the appearance. Respondent did not attend the hearing or otherwise object to the dismissal. He was notified of the court's action. Thereafter, he took no action to vacate the dismissal and to have the appearance reinstated.

On December 18, 1989, Satz filed a request to enter a default, reciting respondent's failure to move for the reinstatement of the appearance. On January 22, 1990, Satz sent to respondent a copy of the order granting the default. On January 23 and January 30, 1990, the intake officer notified respondent that the matter was scheduled for trial on February 26, 1990. After Satz requested an adjournment, the trial was rescheduled to March 12, 1990. Although so advised, respondent did not inform Edison of the trial date and

did not appear at the hearing. On that day, the court entered a judgment of divorce (Exhibit C-3), a copy of which Satz sent to both respondent and Edison.

Asked, at the DEC hearing, why he had not filed a motion to have the default vacated, respondent replied that

> [i]n all honesty, I guess I just froze up and didn't know what to do . . . . Paralyzed, and just didn't know what to do.
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> [T63, 64]
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> . . .
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> I just didn't know what to do with this case . . . . I just didn't know how to get around the earlier judgment of divorce.
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> [T73, 74]

According to respondent, on or about March 16, 1990, he falsely informed Edison that he had not appeared at the trial because he had mistakenly written another trial date on his calendar. Based on this representation, on March 16, 1990, Edison wrote a letter to the court informing it of respondent's "inadvertence" and requesting a re-hearing (Exhibit J-4). Edison enclosed therewith a copy of the November 30, 1987 judgment of divorce.

A few days later, on March 20, 1990, respondent met with Edison at his office. During that conference, for the first time, respondent apprised her of his past misdeeds. He offered to assume responsibility for any financial harm that she might have sustained as a result of his actions and to pursue a modification of certain provisions of the final judgment of divorce. Indeed, on that same

day, respondent wrote to Satz in an attempt to open negotiations to purchase Edison's husband's interest in the house.

Regrettably, however, respondent's improprieties did not end with his confession to Edison. At the March 20 meeting, respondent attempted to engage her help in misrepresenting to the court that the November 30, 1987 document was merely a draft judgment of divorce. At the DEC hearing, respondent so admitted:

> Q. . . . when you met with [Edison] on March 20, did you ask her to concur in your assertion to any third party that you had . . . previously told her that it was an example of a judgment? Did you ask her to help you say that to a third party?
>
> A. Yes.
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> [T80]

On the same day of his meeting with Edison, respondent sent a letter to the intake officer, advising her that ". . . the draft judgment should be marked 'void' and either destroyed or returned to his office. I met with Mrs. Edison this afternoon and reviewed the matter with her. We determined how the misunderstanding had occurred" (Exhibit J-5).

On April 2, 1990, Edison filed a grievance against respondent with the DEC. In it, she stated that:

> [a]fter I wrote a letter to Judge Ross, Ken informed me on March 20, 1990 that he had lied to me and that I was never divorced. He then asked me to lie for him and tell the court that the judgment he gave me in 1987 was only an example of a judgment. He then said he would get the house for me, but he would have to use my name to do this. At that moment I

> agreed because I was in shock, but I have since decided that I could not be an accomplice to this fraud.

[Exhibit C-3]

At the conclusion of the DEC hearing, the panel found that, by preparing and submitting to his client a false judgment of divorce, respondent had engaged in conduct involving fraud, deceit and misrepresentation and in conduct prejudicial to the administration of justice, in violation of RPC 8.4(c) and (d). The panel also found that respondent (1) had failed to file timely pleadings and a motion to vacate the default, in violation of RPC 1.1(a) and 1.3; (2) had failed to communicate with his client, in violation of RPC 1.4(a); (3) had failed to prepare a written retainer agreement, in violation of RPC 1.5; and (4) had attempted to induce another to violate or assist in the violation of the rules of professional conduct (RPC 8.4(a)), by attempting to engage Edison's aid in making a misrepresentation to the court. As to the letter to the intake officer (Exhibit J-5), the panel concluded that the evidence had not clearly and convincingly established that respondent intended it to be a false statement to the tribunal. Lastly, although the panel report does not specifically so state in its conclusions of fact, it is logical to infer that the panel did not find that respondent had signed Edison's name on the custody/visitation fact sheet (Exhibit J-2A) without her knowledge and authorization. Indeed, the panel report makes no mention of a violation on that score and, in fact, alludes to respondent's

allegation that he had signed Edison's name with her approval.[4] The panel also considered strong mitigating circumstances in respondent's behalf, such as his wife's delivery of a stillborn child in the Spring of 1985, his heavy workload, and his remorse and candor before the DEC.

CONCLUSION AND RECOMMENDATION

Upon a de novo review of the full record, the Board is satisfied that the DEC's conclusion that respondent was guilty of unethical conduct is supported by clear and convincing evidence. The Board does not agree, however, with the DEC's finding that the proofs did not clearly and convincingly establish that respondent intended the letter to the intake officer to be a false statement to a tribunal.

The Board's independent examination of the record reveals that respondent committed numerous ethical infractions: (1) he did not file a complaint for divorce or a motion seeking to vacate the default; (2) he did not inform his client of the existence of a divorce action filed by her husband; (3) he lied to his client that the action was nothing but a re-examination of the equitable distribution and that he had not been present at trial because he had mistakenly recorded the wrong date on his calendar; (4) he

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[4] It should be noted that the complaint did not charge respondent with this violation. Rather, at the DEC hearing, the presenter told the panel that he had conducted some investigation of his own and had noticed that the signature on the custody/visitation fact sheet appeared not to be Edison's.

prepared and submitted to his client a false judgment of divorce, thus misleading her that she and her husband had been divorced and that all the issues attendant to the divorce matter had been resolved; (5) he attempted to induce his client to lie to the court; and (6) he misrepresented to a court representative -- the intake officer -- that the November 30, 1987 judgment of divorce was a mere draft and that his client had misunderstood its significance. The foregoing unethical conduct violated RPC 1.1(a), 1.3, 1.4(a), 8.4(c) and (d).

It is unquestionable that respondent's most serious unethical offense was the fabrication of the judgment of divorce, compounded by his coaxing his client to partake in a scheme designed to mislead the court that the November 1987 document was a mere draft judgment of divorce. The Board scoured the record for any reasonable explanation for the above conduct. It found none. As respondent admitted, Edison was a "dream of a client;" she never telephoned him, never asked any questions, never complained and never put any pressure on him for a quick resolution of the matter. Respondent's casual remark that he prepared the fictitious judgment of divorce to "get Edison off his back" (T49) is at odds with the overwhelming evidence, represented by the vast majority of his testimony, that Edison's posture about the status and progress of the matter was "lackadaisical" and close to indifferent.

Having been caught in this web of untruths, by first misleading his client that she was divorced and then covering up the subsequent divorce action filed by her husband, respondent saw

no easy way to extricate himself from the state of affairs that he created. He continued to perpetuate his lies.[5] Ultimately, he confessed his misconduct to Edison, but then tried to induce her to participate in his cover-up to the court. Indeed, in his letter to the intake officer, respondent referred to a misunderstanding by Edison.

Compounding the above serious offenses are his failure to submit to the court the requested document -- as a result of which a default was entered against Edison -- and his failure to take appropriate action to have the default vacated. His conduct caused harm to Edison, as the final judgment of divorce contained two provisions that were adverse to her interests: the division of the

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[5] At the DEC hearing, it was alluded that respondent had lied to the committee investigator that the November 1987 document was a mere draft judgment, the significance of which had been misunderstood by Edison. Respondent conceded his lie. He explained, however, that his conduct, albeit misguided, had been prompted by his belief that the truth does not always bring rewards.

In respondent's own words, ". . . the reason for [the lie to the investigator] was that because I had leveled with Mrs. Edison and felt that I got nowhere by telling the truth, and I was upset over that, disillusioned, however you wanted to categorize it" (T76).

In its de novo review of the record, the Board did not consider the above conduct as a separate ethical violation because the formal complaint did not charge respondent therewith and because the issue was not fully litigated at the DEC hearing so as to justify an amendment to the pleadings to conform with the proofs.

Although the Board refrained from considering respondent's lie to the investigator, his explanation therefor showed a disregard for the truth that did not escape the Board's attention.

marital residence on an equal basis and her husband's entitlement to claiming their son as a dependent for income tax purposes. Fortunately, it appears that the court granted Edison's request for a re-hearing after she retained new counsel (T53). The potentially deleterious consequences to Edison, however, are not difficult to envision. One that comes readily to mind is the possibility that Edison might have remarried, operating as she was under the belief that she and her husband had been divorced.

Although the Board is aware that respondent's actions were unmarked by attempts at personal gain[6] or by any nefarious motives, in the Board's view they constituted a most serious disregard of the ethical standards governing the legal profession. Upon consideration of the relevant facts, the Board is convinced that respondent's ethical breaches rise to a level compelling a term of suspension. There remains the question of its length.

It is undeniable that the Court considers the fabrication of public documents as among the more serious offenses an attorney may commit. In In re Fleisher, 66 N.J. 398 (1975), an attorney pleaded guilty to a charge that he had feloniously and falsely altered a final judgment of divorce. The attorney took a final judgment of divorce in another action and changed the names of the parties so as to indicate that his client and his client's wife had been divorced. Relying on the document, the client obtained a marriage license and remarried. Because of the special circumstances

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[6] Respondent testified that he did not charge Edison for his representation.

present in that case -- medical reports indicated that the attorney was suffering from a personality disorder and that his actions were symptomatic expressions of long standing psychological conflicts, Id. at 399 -- the Court suspended the attorney indefinitely pending his continued psychotherapy.

In In re Yacavino, 100 N.J. 50 (1985), the Court suspended an attorney for a period of three years after he prepared and presented to his client two fictitious orders of adoption to cover up his neglect in failing to advance an uncomplicated adoption matter for a period of nineteen months. The attorney had also misrepresented the status of the matter to his clients on a number of occasions. In mitigation, the Court considered the absence of any purpose of self-enrichment, the aberrational character of the attorney's behavior, and his prompt and full cooperation with law enforcement and disciplinary matters.

Here, too, there is a mitigating circumstance of the most compelling nature. In 1985, respondent's wife delivered a stillborn child. The psychological effects of this unhappy event on respondent and his wife must have been of immeasurable proportion. It is not without a profound sense of compassion, however, that the Board must reach a conclusion that this sad circumstance in respondent's personal life did not strike his practice of law as hard as it was contended. Indeed, respondent's testimony in this regard is at odds with other evidence contained in the record, indicating that his practice was not out of hand. By respondent's own testimony, during the relevant time of the

unethical acts, in the fall of 1987, he was working almost exclusively on a critical matter involving a leveraged buy-out by his primary client. There is nothing in the record to indicate that he was unable to cope with the responsibilities of the profession at that time. In fact, it may be logically inferred from the record that the favorable outcome in that complex transaction was a direct result of respondent's diligent and competent representation. See respondent's brief to the Board, at 4.

The other mitigating factor advanced by respondent, namely his heavy workload due to the inordinate period of time devoted to the above transaction in the fall of 1987 and to the fact that his sole associate left the firm's employment in the late fall of 1987, does not provide the necessary causal nexus to the acts of misconduct. It does not explain why respondent neglected Edison's matter from the inception of the representation, in 1985, and most certainly does not explain why he fabricated the final judgment of divorce in November 1987 or why he cajoled Edison to lie to the court in March 1990.

The Board considered and accepted the contention that respondent's conduct was aberrational. But so was attorney Yacavino's. Despite this recognition, the Court imposed a three-year suspension, reasoning that the attorney's fraud upon the court constituted grave misconduct.

In light of the similarity between the attendant circumstances in Yacavino and in this matter, the Board unanimously recommends

that respondent receive a three-year suspension. The Board's recommendation was not made lightly. It was dictated, however, by the Court's pronouncement in Yacavino and the discipline meted out therein.

The Board further recommends that respondent be required to reimburse the Ethics Financial Committee for administrative costs.

Dated: 7/23/1991 By: Raymond R. Trombadore

Raymond R. Trombadore
Chair
Disciplinary Review Board