SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 07-246
District Docket No. XIV-07-148E

IN THE MATTER OF	:
CARY BARTLOW HALL	:
AN ATTORNEY AT LAW	:

Decision

Argued: October 18, 2007

Decided: November 29, 2007

Richard J. Engelhardt appeared on behalf of the Office of Attorney Ethics.

Respondent appeared pro se.

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

This matter came before us on a motion for reciprocal discipline filed by the Office of Attorney Ethics (OAE), based on respondent's eighteen-month suspension in Pennsylvania. Specifically, respondent filed a back-dated appeal to cover up his failure to timely file it, and lied to a tribunal about the timeliness of the appeal. The OAE recommends the imposition of a three- to six-month suspension. We determine to impose a three-month retroactive suspension.

Respondent was admitted to the New Jersey bar in 2001, and to the Pennsylvania bar in 2000. He has no prior discipline in New Jersey. On September 15, 2003, he was declared ineligible to practice law in New Jersey for failure to pay the annual assessment to the New Jersey Lawyers' Fund for Client Protection. He remains ineligible to date.

On August 23, 2006, respondent and the Pennsylvania disciplinary authorities entered into a Joint Petition in Support of Discipline on Consent. Respondent conceded violating rules comparable to New Jersey RPC 1.3 (displaying lack of diligence), RPC 3.1 (filing a frivolous claim), RPC 3.3(a)(1) (making a false statement of material fact or law to a tribunal), RPC 3.3(a)(4) (knowingly offering false evidence), RPC 3.4 (b)(falsifying evidence), RPC 4.1 (a) (making false statements to a third person in the course of a representation), RPC 8.4(c) (engaging in conduct involving dishonesty, fraud, deceit or misrepresentation), and RPC 8.4(d) (engaging in conduct prejudicial to the administration of justice).

The joint petition summarized the pertinent facts:

> On or about May 13, 2005, Colleen Zoto retained respondent to represent her in an unemployment compensation claim against her former employer, Movers Specialty Service, Inc. ("MSS"). A fee of $1,000 was paid to respondent by two checks for $500 each, dated May 15, 2005 and July 7, 2005.

Ms. Zoto had initially been granted unemployment compensation benefits and that decision was appealed by MSS. A hearing on that appeal was scheduled before Unemployment Compensation Referee Catherine Senyk for May 18, 2005. Respondent advised Ms. Zoto that he could seek a continuance of the hearing. No continuance of the hearing was granted.

On May 18, 2005, the employer and its counsel, Lisanne L. Mikula, Esquire, appeared. Respondent did not appear and he advised Ms. Zoto not to appear. By decision dated May 25, 2005, Referee Senyk reversed the prior determination of the Unemployment Compensation Service Center and denied Ms. Zoto's unemployment compensation claim. The aforesaid decision stated in part, "although duly notified of the date, time and place of the scheduled hearing, the claimant failed to appear to offer testimony." The decision further stated that the last day to file an appeal was June 9, 2005, and advised as follows:

> If you file your appeal by fax, it must be received by the Department by 11:59 p.m. on the last day to appeal. The filing date will be determined by the date of receipt imprinted by the receiving fax machine. If there is no receipt date imprinted by the receiving fax machine, the sender's fax banner will control the date of filing. If neither date appears on the fax, the date of receipt recorded by the Department will serve as the date of filing... . A party filing an appeal by fax is responsible for delay, disruption or interruption of electronic signals and readability of the document and accepts the risk that the appeal may not be properly or timely filed.

On June 10, 2005, respondent attempted to appeal referee Senyk's decision of May 25, 2005, by means of a fax cover sheet dated June 9, 2005,

addressed to the Scranton UC Service Center, together with a letter dated June 9, 2005, which contained the appeal.

In fact, the fax cover sheet dated June 9, 2005, contains the imprinted date of June 10, 2005, from respondent's own fax machine at the top of the page. In addition, the same imprint of June 10, 2005, from respondent's fax machine, is set forth at the top of the attached appeal letter which is dated June 9, 2005.

Both the fax cover sheet and the appeal letter not only contain the imprinted date of June 10, 2005, from respondent's own fax machine, but also contained the imprinted date of June 10, 2005, from the receiving fax machine of the UC Service Center. Furthermore, the aforesaid fax cover sheet and appeal letter have received a date of June 10, 2005 stamped on each page.

Accordingly, respondent's listing of the date of June 9, 2005, on the fax cover sheet and on the appeal letter are misrepresentations inasmuch as those documents were not faxed until June 10, 2005, one day after the last day of the allowable appeal period.

Respondent's representation of the filing date of the appeal as of June 9, 2005, was false and was made by respondent with knowledge of its falsity, or was made with reckless ignorance of the truth or falsity thereof.

On June 10, 2005, respondent faxed a fax cover sheet to Ms. Mikula, which contained a letter to her dated June 10, 2005, as well as a copy of the aforesaid appeal letter to the UC Service Center which had been dated June 9, 2005, but which was not faxed until June 10, 2005.

In respondent's letter to Ms. Mikula of June 10, 2005, respondent stated, "Attached please find my letter appeal of the Referee's Decision/Order in this case which I submitted by facsimile **yesterday.**" (Emphasis added).

In fact, respondent's appeal letter and statement to Ms. Mikula that he had submitted his letter by facsimile "yesterday" (June 9, 2005) were false and were made by respondent with knowledge of their falsity, or made with reckless ignorance of the truth or falsity thereof.

On July 19, 2005, an additional hearing was held before Referee Senyk for the limited purpose of providing testimony regarding respondent's contention that the appeal had been timely filed on June 9, 2005. On July 19, 2005, respondent was sworn and testified under oath,

> Based on those documents, it's my testimony and my belief that the appeal was filed and sent by facsimile on June 9 and that was . . . timely. . . . All I know, and trying to put together dates from the information and documents that I have in my file, is that the letter was sent on the 9th of June by facsimile because that's the date of the letter.

Respondent's sworn testimony before Referee Senyk was false and perjurious and was either knowingly made by respondent with knowledge of its falsity or made by respondent with reckless ignorance of the truth or falsity thereof.

By decision dated August 15, 2005, the Unemployment Compensation Board of Review dismissed Ms. Zoto's appeal, concluding that the "claimant's appeal was filed by fax on June 10, 2005, as evidenced by the date of receipt imprinted by the department's fax machine."

[OAEbExA¶4-¶27.][1]

[1] OAEb denotes the OAE's brief in support of its motion for reciprocal discipline.

On December 14, 2006, the Pennsylvania Supreme Court granted the petition and suspended respondent on consent for eighteen months, effective January 13, 2007.

Following a review of the record, we determine to grant the OAE's motion for reciprocal discipline.

Pursuant to R. 1:20-14(a)(5), another jurisdiction's finding of misconduct shall establish conclusively the facts on which it rests for purposes of a disciplinary proceeding in this state. We, therefore, adopt the findings of the Supreme Court of Pennsylvania.

Reciprocal disciplinary proceedings in New Jersey are governed by R. 1:20-14(a) (4), which provides:

> The Board shall recommend imposition of the identical action or discipline unless the Respondent demonstrates, or the Board finds on the face of the record upon which the discipline in another jurisdiction was predicated that it clearly appears that:
>
> (A) the disciplinary or disability order of the foreign jurisdiction was not entered;
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> (B) the disciplinary or disability order of the foreign jurisdiction does not apply to the Respondent;
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> (C) the disciplinary or disability order of the foreign jurisdiction does not remain in full force and effect as the result of appellate proceedings;
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> (D) the procedure followed in the foreign matter was so lacking in notice or

> opportunity to be heard as to constitute a deprivation of due process; or
>
> (E) the unethical conduct established warrants substantially different discipline.

A review of the record does not reveal any conditions that would fall within the ambit of subparagraphs (A) through (D).

However, as noted by the OAE, subsection (E) applies. Had respondent's conduct occurred in New Jersey, it would have yielded a sanction less severe than an eighteen-month suspension.

Generally, in matters involving misrepresentations to a tribunal, the discipline imposed in New Jersey ranges from an admonition to a term of suspension. See, e.g., In the Matter of Lawrence J. McGivney, DRB 01-060 (March 18, 2002) (admonition for attorney who improperly signed the name of his superior, an Assistant Prosecutor, to an affidavit in support of an emergent wiretap application moments before its review by the court, knowing that the court might be misled by his action; in mitigation, it was considered that the superior had authorized the application, that the attorney was motivated by the pressure of the moment, and that he brought his impropriety to the court's attention one day after it occurred); In the Matter of Robin Kay Lord, DRB 01-250 (September 24, 2001) (admonition for attorney who failed to reveal her client's real name to a

municipal court judge when her client appeared in court using an alias, thus resulting in a lower sentence because the court was not aware of the client's significant history of motor vehicle infractions; in mitigation, the attorney disclosed her client's real name to the municipal court the day after the court appearance, whereupon the sentence was vacated); 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 Mazeau, 122 N.J. 244 (1991) (attorney reprimanded for failing to disclose to a court his representation of a client in a prior lawsuit, where that representation would have been a factor in the court's ruling on the attorney's motion to file a late notice of tort claim); In re Whitmore, 117 N.J. 472 (1990) (reprimand for municipal prosecutor who failed to disclose to the court that a police officer whose testimony was critical to the prosecution of a drunk-driving case intentionally left the courtroom before the case was called, resulting in the dismissal of the charge); In re Clayman, 186 N.J. 73 (2005) (censure for attorney who made did not disclose critical financial information in a bankruptcy petition filed on behalf of a client; in addition, the attorney filed documents that had not

been reviewed and signed by the client; several circumstances militated against a term of suspension); In re Hasbrouck, 185 N.J. 72 (2005) (three-month suspension imposed on attorney who did not disclose to a matrimonial court and to his adversary the disbursement of $600,000 to his client, contrary to a court order requiring the attorney to hold the funds in an interest-bearing account until further order of the court; other improprieties were the attorney's failure to safeguard trust funds and violation of the final judgment of divorce); In re Giorgi, 180 N.J. 525 (2004) (attorney suspended for three months for making misrepresentations to a court and to his adversary, counseling his client to make misrepresentations to the court, making loans to his client without observing the safeguards of RPC 1.8(a), engaging in a conflict of interest by arranging for one client to lend money to another client, making misrepresentations to the OAE, and failing to properly maintain his attorney records); In re Paul, 167 N.J. 6 (2001) (three-month suspension for attorney who made misrepresentations in several certifications filed with the court; the attorney also made misrepresentations to his adversary and in the course of a deposition); In re D'Arienzo, 157 N.J. 32 (1999) (three-month suspension for attorney who made a series of misrepresentations to a municipal court judge to explain his repeated tardiness and failure to appear at hearings;

mitigating factors justified a suspension not longer than three months); In re Mark, 132 N.J. 268 (1993) (attorney suspended for three months for misrepresenting to the court that his adversary had been supplied with an expert's report and then creating another report when the attorney could not find the original; in mitigation, it was considered that the attorney was not aware that his statement was untrue and that he was under considerable stress from assuming the caseloads of three attorneys who had recently left his firm); In re Kernan, 118 N.J. 361 (1990) (attorney received a three-month suspension for failure to inform the court, in his own matrimonial matter, that he had transferred property to his mother for no consideration, and for failure to amend his certification listing his assets; the attorney had a prior private reprimand); In re Forrest, 158 N.J. 428 (1999) (six-month suspension for attorney who, in a personal injury case in which he represented a couple, did not disclose to his adversary, to an arbitrator, and to the court that the husband had died; at the arbitration proceeding, the attorney advised the wife not to disclose her husband's death and told the arbitrator that the husband was "unavailable;" the attorney later attempted to pursue a settlement with the adversary and disclosed the husband's death only after the court issued an order for the husband's medical examination; the attorney was moved by personal

gain, in that the larger the settlement the larger his fee; the attorney had a prior private reprimand for negligent misappropriation and recordkeeping violations); In re Telson, 138 N.J. 47 (1994) (attorney suspended for six months after he concealed a judge's docket entry dismissing his client's divorce complaint, obtained a divorce judgment from another judge without disclosing that the first judge had denied the request, and denied his conduct to a third judge, only to admit to this judge one week later that he had lied because he was scared); In re Cillo, 155 N.J. 599 (1998) (one-year suspension for attorney who misrepresented to a judge that a case had been settled and that no other attorney would be appearing for a conference; the attorney then obtained a judge's signature on an order dismissing the action and disbursing all escrow funds to his client; the attorney knew that at least one other lawyer would be appearing at the conference and that a trust agreement required that at least $500,000 of the escrow funds remain in reserve); and In re Kornreich, 149 N.J. 346 (1997) (three-year suspension imposed on attorney who, after being involved in an automobile accident, misrepresented to a municipal court judge, to the police, and to her lawyer that her babysitter was driving her automobile and presented false evidence in an attempt to falsely accuse the

baby-sitter of her own wrongdoing; two members of the Court voted for disbarment).

Unlike the attorneys who received admonitions, reprimands, and even a censure, respondent's misrepresentations were not confined to one incident, but were made on a number of occasions. He affixed improper dates to a June 10, 2005 letter and fax cover sheet to the unemployment compensation referee to make it appear that the documents had been filed on June 9, 2005, the deadline for the filing of the appeal; he misrepresented, in a June 10, 2005 letter to his client, that he had filed the appeal timely on June 9, 2005; he made that same misrepresentation to his adversary; and he lied at the hearing before the unemployment referee in order to cover up his acts.

On the other hand, respondent's conduct was not as serious as that of the attorneys who received six-month suspensions. In Forrest, the attorney involved his client in his web of deceit, stood to gain from his deception, and had been previously disciplined. Respondent, who has not been disciplined before, was moved by his desire to preserve his client's right of appeal.

In Telson, too, the attorney's conduct was much more severe than respondent's. After a judge dismissed the client's complaint for divorce for insufficient evidence to sustain a

cause of action, the attorney "whited-out" the official court document that recorded the dismissal, and presented the case to another judge, who granted the divorce. Later, the attorney lied to the assignment judge about his alteration of the court document. Compelling factors mitigated the attorney's grave conduct. By contrast, although respondent's actions were serious, they were not as prejudicial to the administration of justice as Telson's.

Furthermore, respondent's conduct was not without mitigation. As noted by the Pennsylvania disciplinary authorities, respondent acknowledged his wrongdoing, apologized for his conduct, returned the fee to the client, participated in many professional and community activities, and, despite having been admitted to the Pennsylvania bar only since 2001, has become well-regarded in the Montgomery Bar Association.

In light of all of the foregoing, we determine that a three-month suspension, retroactive to January 13, 2007, the date of respondent's suspension in Pennsylvania, is the appropriate extent of discipline for respondent's conduct.

Member Lolla did not participate.

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
William J. O'Shaughnessy, Esq.

By: _____
for Julianne K. DeCore
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Cary B. Hall
Docket No. DRB 07-246

Argued: October 18, 2007

Decided: November 29, 2007

Disposition: Three month suspension

Members	Disbar	Three-month Suspension	Reprimand	Dismiss	Disqualified	Did not participate
O'Shaughnessy		X				
Pashman		X				
Baugh		X				
Boylan		X				
Frost		X				
Lolla						X
Neuwirth		X				
Stanton		X				
Wissinger		X				
Total:		8				1

By Isabel Frank
Julianne K. DeCore
Chief Counsel