SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 08-232
District Docket No. XIV-08-203E

IN THE MATTER OF

JOSÉ VICTOR BERNARDINO
a/k/a JOSEPH BERNARDINO

AN ATTORNEY AT LAW

Decision

Argued: November 20, 2008

Decided: December 23, 2008

Michael J. Sweeney 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"), following the respondent's four-year suspension in Pennsylvania

for his admitted violations of RPC 3.1 (bringing or defending a proceeding, or asserting or controverting an issue therein, knowing or reasonably believing it to be frivolous), RPC 8.1(a) (knowingly making a false statement of material fact in connection with a bar admission application), RPC 8.1(b) (failing to disclose a fact necessary to correct a misapprehension know by the person to have arisen in connection with a bar admission application), and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation).

In short, respondent submitted an application to practice law before the United States Patent and Trademark Office ("PTO"), but failed to fully disclose that he was under criminal and disciplinary investigation for his conduct with respect to his former employer/law firm. Respondent actively misled the PTO about the status of the disciplinary investigation. He also failed to provide complete information and documentation with respect to an outstanding tax liability to the federal government and failed to update the application, as required, when the facts so warranted.

Upon the recommendation and consent of respondent and the Pennsylvania Office of Disciplinary Counsel ("ODC"), the Supreme

Court of Pennsylvania suspended him for four years, based on his representations and omissions on the PTO application.

The OAE seeks "a lengthy suspension," with the condition that respondent not be eligible for reinstatement in New Jersey until he is reinstated in Pennsylvania. For the reasons expressed below, we determine to impose a three-year suspension, consecutive to the one-year suspension imposed on respondent by the New Jersey Supreme Court in February 2008, with the condition that he be precluded from seeking reinstatement in New Jersey until he is reinstated in Pennsylvania.

Respondent was admitted to the practice of law in Pennsylvania in 1998. He was admitted to the New Jersey bar in 1999. Presently, he does not maintain an office for the practice of law in either state.

On December 14, 2006, the Supreme Court of Pennsylvania entered an order (effective January 13, 2007) suspending respondent for one year and requiring him to make restitution to his former employer, the law firm of Oliver & Caiola ("the Oliver firm"), in the amount of $17,500 and to dismiss with prejudice a lawsuit that he had instituted against the firm. The suspension was based on a joint petition in support of discipline on consent in which respondent agreed that he had

violated Pennsylvania RPC 1.15(a) (requiring a lawyer to hold property of clients or third persons in connection with a representation separate from the lawyer's own property), RPC 1.15(b) (requiring a lawyer to promptly notify the client or third person of the receipt of fiduciary funds and to render a full accounting of such funds upon request), RPC 1.15(c) (requiring a lawyer, during the course of a representation, to keep separate property in which the lawyer and another person claim an interest until there is an accounting and a severance of their interests), and RPC 8.4(c) (prohibiting an attorney from engaging in conduct involving dishonesty, fraud, deceit or misrepresentation).

On February 27, 2008, as a matter of reciprocal discipline, the Supreme Court of New Jersey suspended respondent for one year, effective immediately, for his violation of New Jersey RPC 8.4(c). In re José Victor Bernardino, 193 N.J. 596 (2008).

Specifically, prior to starting his employment with the Oliver firm, respondent misrepresented the number and identity of pre-existing clients and client matters that he would continue to handle after he began employment there. Moreover, despite the firm's policy prohibiting its attorneys from maintaining a private practice outside the firm, respondent

surreptitiously continued to represent the undisclosed clients and handle the undisclosed matters, retaining one hundred percent of the fees received in those matters.

On March 20, 2008, the Supreme Court of Pennsylvania suspended respondent for four years, the suspension to be consecutive to the one-year suspension effective January 2007. The facts that gave rise to this suspension are taken from the Joint Petition in Support of Discipline on Consent under Rule 215(d), P.A.R.D.E., which was filed with the Disciplinary Board of the Supreme Court of Pennsylvania ("the Pennsylvania Board") on October 12, 2007.

With respect to the disciplinary matter involving the Oliver firm, in June 2004, the firm filed a criminal complaint against respondent with the East Norriton, Pennsylvania police department, based on its claim that respondent had diverted the firm resources and fees. In July 2004, the Oliver firm's filed a disciplinary complaint against respondent.

The East Norriton police department obtained a search warrant for respondent's personal computer (presumably, in June 2004). However, he did not turn it over to the Montgomery County detectives until September, after his criminal defense attorney was informed that respondent would not be prosecuted if

he released his computer to the detectives and made restitution to the Oliver firm.

In January 2005, the Pennsylvania ODC informed respondent "of its concerns arising from the Oliver firm's complaint and requested that Respondent provide information and documentation in response to the complaint." Between January and November 2005, respondent and his attorney in the disciplinary matter, Carol Ann Sweeney, participated in the ODC's investigation of the Oliver firm's complaint. At no time during this ten-month period did the ODC advise either respondent or Sweeney that it had either terminated the investigation or made a finding in respondent's favor.

On April 7, 2006, the ODC notified Sweeney that it had filed a petition for discipline (complaint). Respondent was served with the complaint eleven days later. He filed an answer on June 5, 2006. The joint petition between him and the ODC in that matter was filed with the Pennsylvania Board on September 6, 2006.

On March 10, 2006, which was fourteen months into the ODC's investigation of the Oliver firm's complaint and about a month before the ODC's complaint in the Oliver matter was docketed and served on respondent, respondent submitted to the Office of

Enrollment and Discipline ("OED") of the the PTO and an application for registration to practice before the PTO. The application instructed, in part:

> Candor and truthfulness are significant elements of fitness relevant to practice before the [PTO]. You should, therefore, provide the [OED] with all available information, however unfavorable, even if its relevance is in doubt, with regard to the questions asked below. For each question answered "YES," provide a detailed statement setting forth all relevant facts and dates alone [sic] with verified copies of relevant documents. **Your responses must be updated as necessary, prior to your registration. . . . Failure to disclose the requested information may result in denial of registration or in disciplinary proceedings under 37 CFR §10.22 should you become registered.**
>
> [OAEaEx.D¶5a][1]

According to the joint petition, respondent identified his "legal name" as "Jose Victor Bernardino," but did not reply to the question asking for the "[n]ame shown on **valid** Government **ID.**" In response to the question on the application asking

---

[1] "OAEa" refers to the appendix, which follows the OAE's June 10, 2008 brief in this matter. "Ex.D" refers to the Joint Petition in Support of Discipline on Consent Under Rule 215(d), P.A.R.D.E. (Joint Petition).

whether "any charges had ever been preferred against you in connection with your practice before any Federal or State court, or municipal bureau, commission, office or agency of any kind or character," respondent "failed to reveal that he had been notified of allegations of disciplinary misconduct by letter dated January 3, 2005, and that the disciplinary investigation was ongoing."

Applicants were required to check Item 14, if applicable, and identify the courts where the applicant was a member. On respondent's application, the complete statement plus the information inserted by him read as follows:

> I am a member in good standing of the bar of the highest court of a State or Territory of the United States. A list of all said courts and corresponding bar membership number(s) follows: Commonwealth of Pennsylvania, State of New Jersey.
>
> [OAEaEx.D¶5e]

Questions 19 and 20 asked the following:

> Have you ever been fired or discharged from any job, or have been asked to resign or quit for conduct involving dishonesty, fraud, misrepresentation, deceit, or any violation of Federal or State laws or regulations?
>
> Have you ever resigned or quit a job when you were under investigation or inquiry for conduct which could have been considered as

> involving dishonesty, fraud, misrepresentation, deceit or violation of Federal or State laws or regulations, or after receiving notice or been advised of possible investigation, inquiry, or disciplinary action for such conduct?
>
> [OAEaEx.D¶5f-¶5g.]

Respondent "failed to reveal that he had been terminated by the Oliver firm due to, *inter alia*, the matters set forth in ¶¶3.c and 3d., *supra*." These paragraphs identified the individual acts of dishonest conduct that respondent had committed while employed by the Oliver firm.

Another question on the application asked if the applicant was delinquent on any State or Federal debt, including taxes. Respondent answered: "I am currently operating under a plan with the Department of Treasury and the Internal Revenue Service to make monthly payments toward my 1040 Tax Liability for the 2003 Tax Year."

Respondent signed the application with an illegible signature under the following printed statement:

> Upon the basis of the foregoing information and any attached documents, I hereby apply for registration to practice in patent cases before the United States Patent and Trademark Office. I certify that each and every statement or representation in this application is true and correct. (*A willfully false statement or certification*

> *is a criminal offense and is punishable by law [18 U.S.C. §1001].*)
>
> [OAEaEx.D¶5i.]

According to the petition, respondent added a "supplemental statement for affirmative response to background information" with respect to question number 22, which he signed with an illegible signature, albeit under the typed name "Joseph Bernardino, Esquire." Respondent wrote:

> I, Joseph Bernardino, verify that after reasonable investigation, the assertions contained above are true and correct to the best of my knowledge, information and belief. I understand the ramifications of failing to exhibit Candor [sic] and truthfulness to the USPTO.
>
> [OAEaEx.D¶5j.]

In a March 27, 2006 "Notice of Incompleteness and Denial of Admission," respondent was informed by the OED that his application had been denied "due to the matter in ¶5.b. and c., *supra*." In those paragraphs, the joint petition stated that respondent had identified his legal name as "Jose Victor Bernardino," but had failed to identify the "[n]ame shown on **valid** Government **ID.**"

On April 3, 2006, respondent filed a second application, in which he again identified his legal name as "Jose Victor

Bernardino." He also failed to answer question 15, which asked whether the applicant ever had any charges "preferred against you in connection with your practice before any Federal or State court, or municipal bureau, commission, or office or agency of any kind or character." This time, however, respondent answered "yes" to question 20:

> On or about June 2004, I was wrongfully accused by a former employer of stealing clients from his firm. An investigation was conducted by the Montgomery County District Attorney's Office and the Attorney Ethics board [*sic*] with a return of no wrongful conduct.
>
> On or about June 2005, a lawsuit was filed by applicant against my former employer for tortuous [*sic*] interference with contract and defamation. The action was filed in Philadelphia County, Pennsylvania.
>
> [OAEaEx.D¶7c.]

Finally, unlike the first application, respondent signed the name "Jose V. Bernardino" under the printed certification of accuracy.

According to the joint petition:

> Respondent's statements concerning the investigation and actions of the District Attorney's Office and the attorney disciplinary system were knowingly false, in that the allegations in both instances included those set forth in ¶3.d., the

> allegations were true, the District Attorney's Office had not made a finding of no wrongful conduct but had declined to prosecute, Respondent had been advised of allegations of misconduct by [the ODC], and [the ODC] had not advised Respondent or his counsel of the disposition of the disciplinary matter.
>
> [OAEaEx.D¶8.]

Moreover, the joint petition stated that respondent had "failed to reveal the events set forth in ¶¶3.a.-3.d., *supra*, to OED in his Application and to update his Application as to the events in ¶¶4.a.-4.n, *supra*." These paragraphs detailed respondent's misconduct at the Oliver firm and the criminal and disciplinary investigation that resulted from his behavior.

On May 25, 2006, respondent passed the PTO registration examination. On June 12, the OED directed respondent to provide, within thirty days, "specified information and documentation concerning his tax liability and plan and concerning the investigations of the District Attorney's Office and the 'Attorney Ethics Board'" [*sic*].

On June 20, 2006, respondent wrote the following to the OED:

> 2003 Tax Year IRS Liability
>
> My wife and I filed a joint tax return for the 2002 tax year. We were found to owe the

government approximately $5,000.00 in taxes. I entered into a payment plan with the internal revenue service [*sic*] setting forth a monthly payment of $150.00. When we received our 2003 refund of $3,000.00, the IRS applied that refund to the outstanding liability leaving approximately $800.00 remaining. As of the date of this correspondence, the liability has been paid off. I attach hereto a receipt of an online payment for the total amount outstanding.

False Accusations from former employer

The Montgomery County District Attorney commenced an investigation regarding accusation [*sic*] from a former employer that I stole files from his office. In response to these accusations, I surrendered a personal laptop computer as well as any and all client files in possession for their evaluation.

During the investigation, I retained the services of an attorney, Richard Tompkins, Esquire, to assist and act as intermediary between myself and the County Detective's Office. On March 16, 2005, I received a carbon copy letter from my attorney to Carol Sweeney, Esquire regarding the Montgomery County District Attorney's position with respect to criminal charges.

With respect to the Ethics Investigation, I attach hereto computer printout copies of the Commonwealth of Pennsylvania's Disciplinary Board website indicating that

there is no discipline pending against my license to practice law in Pennsylvania[.]

[OAEaEx.D¶12a.]

According to the joint petition, respondent provided "limited documentation" with respect to the tax matter. As to the criminal and disciplinary matters, respondent provided only a copy of the District Attorney Office's letter stating that the District Attorney had decided not to prosecute respondent and a print-out from the Pennsylvania Board "showing his status as 'ACTIVE,' but not reflecting the pendency of the disciplinary matter."

Consequently, respondent agreed that he had "failed to fully disclose to OED the nature of the disciplinary and criminal allegations against him, the accuracy of those allegations, and the status of the disciplinary prosecution and to provide the Petition for Discipline and Answer." Respondent also agreed that he had "actively misled OED about the status of the disciplinary matter, in that he knew that the page from the website did not reflect the fact that a file was open and a Petition for Discipline had been filed." Finally, respondent agreed that he had failed to provide to the OED "complete information and documentation concerning his tax liability,

payment plan, compliance with a plan, timely filing of tax returns, and related matters."

In August 2006, the OED sent to respondent an "order to show cause requirement," as to why his application for registration should not be denied, on the basis that "he had not met his burden of establishing to the satisfaction of the OED Director that he possessed the good moral character and reputation required to represent applicants before the PTO," including the production of the Pennsylvania petition for discipline and his answer. On November 1, 2006, respondent filed a response to the order to show cause in which

a. Respondent falsely represented that "the ethics investigation that was not [*sic*] had not come to fruition until approximately April 12, 2006" and that he had responded "based upon the information available to me";

b. Respondent made the unfounded statement that he was "in a mental mindset that the disciplinary investigation was at a standstill and there was little probability of the imposition of ethics discipline";

c. Respondent falsely denied that he was aware that he was being charged with misappropriation of firm resources prior to the filing of the Petition for Discipline;

d. Respondent falsely argued that the allegation that he was aware as of April 26, 2006, that there had not been a return of no wrongful conduct by Petitioner was without merit;

e. Respondent falsely implied that he was unaware of the pendency of the disciplinary matter and had no obligation to reveal it to OED prior to the filing of the Petition for Discipline; and

f. Respondent supplied documentation concerning his IRS liabilities, which showed that he filed tax returns for 2002 and 2003 more than a year after extended due dates and was assessed interest and penalties, but he did not prove compliance with a payment plan other than to show payment and state that the liability was met.

[OAEaEx.D¶17a-¶17f.]

According to the joint petition, respondent knew or should have known, at the time he filed the application, that the disciplinary matter was pending. Moreover, he failed to comply with the OED's lawful demand for information pertaining to his tax matters.

On December 14, 2006, the OED Director denied respondent's application for registration with the PTO.

Respondent and the ODC agreed that, by his conduct with respect to his application for admission to the PTO, he violated

the following Pennsylvania RPCs: 3.1, RPC 8.1(a), RPC 8.1(b), and RPC 8.4(c). The ODC recommended to the Supreme Court of Pennsylvania that respondent receive a four-year suspension, to be served consecutively to the one-year suspension imposed on him on December 14, 2006. The ODC noted respondent's remorse and cooperation with the Pennsylvania disciplinary authorities.

As stated previously, on March 20, 2008, the Supreme Court of Pennsylvania imposed the recommended four-year suspension. On April 30, 2008, respondent wrote a letter to the OAE and reported that "additional discipline" had been imposed on him in Pennsylvania. He did not identify either the misconduct or the nature of the discipline.

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

> The Board shall recommend the imposition of the identical action or discipline unless the respondent demonstrates, or the Board

> finds on the face of the record on 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;
> (B) the disciplinary or disability order of the foreign jurisdiction does not apply to the respondent;
>
> (C) the disciplinary or disability order of the foreign jurisdiction does not remain in full force and effect as the result of appellate proceedings;
>
> (D) the procedure followed in the foreign disciplinary 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 fall within the scope of subparagraphs (A) through (D). Subsection (E) applies, however, as in New Jersey, "absent special circumstances, a suspension term shall be for a period that is. . . no more than three years." R. 1:20-15A(a)(3). We see no special circumstances here that would justify a deviation from what is almost always the maximum term of suspension in New Jersey.

"[A] final adjudication in another court, agency or tribunal, that an attorney admitted to practice in this

state . . . is guilty of unethical conduct in another jurisdiction . . . shall establish conclusively the facts on which it rests for purposes of a disciplinary proceeding in this state." R. 1:20-14(a)(5). Thus, with respect to motions for reciprocal discipline, "[t]he sole issue to be determined . . . shall be the extent of final discipline to be imposed." R. 1:20-14(b)(3).

Respondent agreed that he made misrepresentations on the application to practice before the PTO, failed to fully disclose the facts requested of him by the OED, and made false representations in response to the order to show cause issued by the OED. Thus, the conclusively-established facts demonstrate clearly and convincingly that respondent knowingly made a false statement of material fact in connection with a bar admission application and failed to disclose a fact necessary to correct a misapprehension known by him to have arisen in connection with the application (RPC 8.1(a) and RPC 8.1(b)). As a result of his dishonest conduct, respondent also violated RPC 8.4(c).

Respondent did not, however, violate RPC 3.1, which prohibits the assertion of frivolous claims and defenses. This rule generally applies to litigation matters, not to applications to practice law before any tribunal.

In New Jersey matters pertaining to a lawyer's dishonesty in connection with a bar admission application, the discipline has ranged from a reprimand to revocation of the lawyer's license to practice law. In re Tan, 188 N.J. 389 (2006) (reprimand for attorney's misrepresentation to the New Jersey Board of Bar Examiners that he had earned a bachelor's degree); In re Solvibile, 156 N.J. 321 (1998) (six-month suspension for attorney's misrepresentation to the Pennsylvania Board of Law Examiners that she had mailed her admission application prior to the closing deadline); In re Guilday, 134 N.J. 219 (1993) (six-month suspension for attorney's failure to disclose on his New Jersey, Pennsylvania, and Delaware bar admission applications that, between the ages of seventeen and twenty-seven, he had been arrested five times for drunk-driving and once for disorderly conduct); In re Czmus, 170 N.J. 195 (2001) (attorney's license revoked for his failure to disclose on his New Jersey bar admission application that he had surrendered his license to practice medicine in California and New York; he also lied about his education, employment, other licenses, disciplinary proceedings, and legal proceedings; he was precluded from seeking re-admission to the bar for two years); In re Benstock, 151 N.J. (1997) (after this Board had recommended a three-month suspension

for attorney's failure to disclose on his New Jersey bar admission application his prior attendance and academic dismissal from two law schools, his license was revoked by the Supreme Court when the law school that had ultimately conferred the Juris Doctor degree on him revoked it); In re Gouiran, 130 N.J. 96 (1992) (attorney's license revoked after he misrepresented in his New Jersey bar admission application that he had not been a party to any civil proceeding, that he had not been disciplined as a member of any profession, and that disciplinary proceedings had not been filed against him; attorney claimed that he had read the questions narrowly and, therefore, had answered them in good faith, but added that he would answer them differently now; revocation stayed to permit the attorney to re-apply for admission); and In re Scavone, 106 N.J. 542 (1987) (attorney's license revoked for his failure to disclose on his New Jersey bar admission application that he had withdrawn from a law school under threat of disciplinary charges).

Here, of course, revocation is not viable for two reasons: (1) the license was never issued and (2) (if issued) we have no jurisdiction over PTO applications. The question is, thus, what measure of discipline New Jersey should impose on respondent for misrepresentations on his application to the PTO.

The discipline imposed on attorneys who misrepresent material facts on bar admission applications turns largely on the nature of the misrepresentation and mitigating and aggravating factors. In Tan, for example, we noted that the attorney had twice attempted to remedy the situation that caused him not to receive the bachelor's degree and that his misrepresentations were made under pressure and were the product of poor judgment and inexperience, rather than a lack of scruples. Moreover, the attorney had accepted responsibility for his wrongdoing, had recognized the impropriety of his conduct, had expressed remorse, had no disciplinary history, had achieved a certain degree of professionalism, and had been actively engaged in the Filipino community, of which he is a member.

In Solvibile, the attorney's application to the Pennsylvania bar was returned because it was received after the filing deadline. She then misrepresented to the Board of Law Examiners that the money order accompanying the application was misdated and that the application had been mailed prior to the closing deadline. In support of her claim, the attorney submitted a letter from a post office employee misrepresenting that the money order was misdated.

When Solvibile's misrepresentations came to light, she admitted her actions, explained why she had tried to deceive the

Pennsylvania board, and presented character witnesses in her behalf. Nevertheless, Solvibile was denied admission in Pennsylvania and given the alternative of seeking judicial review of the determination or submitting a request for reconsideration no less than one year from the date of the determination.

Solvibile notified the OAE of the circumstances surrounding the denial of her application in Pennsylvania. She accepted full responsibility for her actions, admitted her wrongdoing to the Pennsylvania Board of Law Examiners and New Jersey disciplinary authorities, and was remorseful. In imposing a six-month suspension, we found that Solvibile's conduct was more the product of poor judgment and inexperience than malice or deficiency of character.

In Guilday, the attorney failed to disclose his arrest record to both the New Jersey and the Pennsylvania Board of Bar Examiners. When he later sought admission to the Delaware bar, the examiners there discovered one of his arrests. During questioning by an investigator, the attorney failed to disclose the other arrests. Upon final review of his record, the Delaware examiners discovered another arrest. Yet, the attorney admitted only to this arrest and still did not disclose the others. After the attorney was declined admission to the Delaware bar, he

requested a hearing, at which time he disclosed his complete arrest record. At this point, the attorney notified the New Jersey Board of Bar Examiners of his prior arrests. The Committee on Character recommended that his license be revoked, due to his deception over a six-year period. Based on the attorney's pattern of deception, which he chose to perpetuate even after having been given an opportunity to rectify it, he received a six-month suspension.

In Czmus, the attorney's dishonesty pervaded not just his responses on his bar application, but also the entire ethics proceeding. Prior to becoming an attorney, Czmus was a licensed physician in California. In his application for privileges to two local hospitals, he misrepresented that he was board-certified. After that misrepresentation came to light, he entered into a stipulation providing for the stay of the revocation of his medical license for five years and probation during that time period. Thereafter, the attorney surrendered his California medical license and, ultimately, his New York medical license, when additional charges of gross negligence and other professional misconduct were discovered.

Although the attorney disclosed, in his law school application, that he had been a licensed physician, he failed to

do so in his New Jersey bar application. In the bar application, the attorney lied about his education, employment, other licenses, disciplinary proceedings, and legal proceedings. We noted, in our decision:

> [Czmus's] pattern of deception continued throughout the ethics investigation. He made [among others] the following misrepresentations during the OAE interview: (1) he did not disclose that he had a medical degree because he had misunderstood the bar application question about education, believing that it addressed only undergraduate education; (2) he did not disclose his employment history as a physician because he worked for a [lab] and did not have his own practice; (3) he did not disclose that he had been disciplined as a physician or that he was involved in legal proceedings because, at the time that he completed the bar application, he was advised by his California attorney . . . that the medical disciplinary matter had been administratively expunged and that disclosure was not required; (4) he did not disclose that he had been licensed as a physician because the question addressed licenses in which proof of good character had been required and, since he had completed the application twenty-five years earlier, he did not recall that proof of good character was required; and (5) [his California attorney] was ill, was of retirement age and could not be contacted because his telephone number was not known.
>
> [In the Matter of Akim F. Czmus, DRB 00-384 (August 2, 2001) (slip op. at 19).]

Czmus made similar misrepresentations in his answer to the formal ethics complaint. In addition, he made misrepresen-

tations to his medical experts about the circumstances surrounding his medical discipline and the bar application; was not forthcoming with his own attorney; and misrepresented to his character witnesses the reason for the ethics hearing, informing them that it was for renewal of his law license. We found it ironic that "[Czmus] lied to the same people he was counting on to testify to his veracity and good character." Id. at 20. Finally, to make matters worse, Czmus refused to accept responsibility for his actions blaming his mental state, his employer, or others for his problems.

In In re Gouiran, 130 N.J. 96 (1992), the attorney failed to disclose disciplinary proceedings in connection with his real estate broker's license. The attorney misrepresented, in his certified statement of candidate, that he had not been a party to any civil proceeding, that he had not been disciplined as a member of any profession, and that disciplinary proceedings had not been filed against him. At the ethics hearing, the attorney explained that, because he had read the questions narrowly, he had answered them in good faith, adding that he would answer them differently now. Although the Court revoked his license, it stayed the revocation to permit the attorney to reapply for admission. The stay was based on the significant passage of time

(eight years) since the attorney had applied for bar admission, the attorney's recognition of his mistake, and the attorney's current awareness of a lawyer's duty of candor.

In In re Scavone, 106 N.J. 542 (1987), the attorney misrepresented on his law school application that he was a member of a minority group. After he completed one year of law school, the attorney altered the grades on his transcript and falsified his resumé to indicate that he had achieved a higher score on the law school aptitude test, all in an effort to obtain employment. After the law school discovered the misrepresentations, it offered the attorney the option of withdrawing or being expelled. The attorney chose to withdraw, signing an agreement that, if he failed to withdraw, the law school would immediately convene a disciplinary committee to hear charges against him. The attorney subsequently graduated from another law school and applied to take the New Jersey bar examination. In his certified statement of candidate, he failed to disclose that he had withdrawn from another law school under the threat of disciplinary charges.

At a hearing conducted by the Committee on Character, the attorney maintained that his answer on the certified statement was correct because his withdrawal from law school had been voluntary. He also asserted that he believed that the second

law school would provide the information to the Committee on Character.

At the hearing, the attorney showed no remorse and demonstrated that he continued to have no regard for the truth, testifying that he would still complete the application in the same way and that, if he answered differently, it would only be to "appease" the Committee on Character. In revoking the attorney's license to practice law, the Court concluded that he was not fit to practice because of his concealment of material facts from the Committee on Character. The Court noted that

> [c]andor and honesty are a lawyer's stock and trade. Truth is not a matter of convenience. Sometimes lawyers may find it inconvenient, embarrassing, or even painful to tell the truth. Nowhere is this more important than when an applicant applies for admission to the bar.
>
> [Id. at 553.]

Moreover, the Court found that the attorney's inability to tell the truth about himself demonstrated a lack of good moral character and unfitness to practice law. The Court was particularly troubled by the attorney's failure to rehabilitate himself, but did not foreclose the possibility that, at some future time, the attorney might be able to demonstrate his fitness to practice law.

Here, respondent's behavior – had it involved an application for admission to the New Jersey bar – would likely warrant the revocation of his license had it been granted. That is not the situation here, however. Respondent's conduct took place before the PTO authorities, which never issued a license to him. Although revocation is not an option here, respondent's pervasive pattern of deception justifies a long-term suspension in New Jersey, as was the case in Pennsylvania.

Specifically, respondent first deceived the Oliver firm before it hired him and he deceived the firm while he worked there. His deception continued when he applied to the Patent bar and, on four successive occasions (the initial application, the second application, the request for additional information, and the order to show cause), he continued to withhold – indeed misrepresent – information regarding the disciplinary action and the tax matter, which was clearly requested in the application.

On the first application, respondent failed to disclose that he was under investigation by the OED. He also failed to disclose that he had been terminated by the Oliver firm for dishonest conduct. When, after the application was denied, respondent re-applied to the bar, he "massaged," at best, the facts surrounding the events at the Oliver firm. He never mentioned that he was

fired. Instead, he stated that he was "wrongfully accused" by his former employer. Further, he misrepresented that both the criminal and disciplinary investigations concluded that he had engaged in "no wrongful conduct." Finally, he identified the lawsuit that he filed against the firm, claiming tortuous interference with contractual relations and defamation. When considered as a whole, this recitation of the facts surrounding his dismissal from the firm suggested that not only was respondent wrongly accused and ultimately vindicated, but he was seeking redress based on the false accusation lodged against him by the firm.

Respondent's misconduct continued again when the OED directed him to provide additional information and documentation with respect to his tax liability and the criminal and disciplinary investigations. This time, he detailed the terms of the plan with the IRS. However, while he claimed that he and his wife had satisfied their financial obligation to the IRS, he provided no documentation or information to establish that he had complied with the IRS plan.

Moreover, respondent continued to assert that the allegations of the Oliver firm were "false" and provided a copy of the District Attorney's letter stating that he would not be prosecuted, thereby perpetuating the idea that he had done no wrong. Finally, he

provided no details about the ethics investigation, including that a complaint had been served and answered. Rather, he attached a computer print-out from the Pennsylvania Board's website, reflecting his status as "active." He did this knowing that the website page that he produced did not reflect that a disciplinary proceeding was under way in that state.

Finally, after a fourth chance, respondent continued to misrepresent important facts to the OED. This time, he was ordered to show cause that he possessed good moral character and reputation. Respondent failed the test – again. With respect to the disciplinary matter, he falsely claimed that (presumably, at the time of his initial application) the disciplinary investigation was at a "standstill and there was little probability of the imposition of ethics discipline" and "falsely implied that he was unaware of the pendency of the disciplinary matter." Moreover, he continued to withhold proof that he had complied with the IRS payment plan.

When considered as an aggregate, these facts demonstrate a pattern of deception that is worthy of substantial discipline.

According to the joint petition, respondent was remorseful for his misconduct. At oral argument before us, respondent expressed

remorse. Although remorse is a mitigating factor, we find that it is it not enough to overcome the aggravating factors in this case.

By analogy, to the cases involving attorneys who make misrepresentations in connection with applications to practice law in New Jersey, respondent's conduct requires a long-term suspension. Respondent's behavior is akin to that of the lawyer in Guilday, who failed to disclose his arrest record in New Jersey and Pennsylvania and repeatedly failed to disclose the full extent of his "rap sheet" to the Delaware bar examiners as they slowly uncovered his arrests one-by-one. Although Guilday received a six-month suspension based on his pattern of deception, which he perpetuated despite multiple opportunities to rectify it, the facts there are sufficiently distinguishable to warrant a different result here.

Guilday had not already established a pattern of deception, as is the case here, where respondent already has been suspended for dishonest conduct. Moreover, Guilday was withholding the arrest records, which he accumulated during a misspent youth. The misconduct that respondent was withholding was directly related to the practice of law.

Respondent's conduct is more like that of the attorneys in Gouiran and Czmus. In Gouiran, for example, the attorney

misrepresented on his bar admission application that he had not been disciplined and had not had disciplinary proceedings instituted against him in any profession when, in fact, he had been involved in a disciplinary proceeding with respect to his real estate license. At the hearing, Gourian stated that he had answered the questions narrowly, but in good faith. He added, that he would now answer the questions differently. This change of mind plus the passage of time since his admission (eight years), his recognition of the mistake, and his current awareness of his duty of candor did not save the attorney from the revocation of his license. Nevertheless, the revocation was stayed so that he could re-apply for admission.

In Czmus, the attorney misrepresented in his applications for privileges at two hospitals that he was board-certified. When his deception was discovered, he consented to a stay of the revocation of his license for five years and a term of probation. After additional misconduct came to light, he surrendered his license to practice medicine in California and New York.

Czmus did not tell the New Jersey Board of Bar Examiners that he had been a licensed physician. He lied about his education, employment, and other material matters. He refused to accept responsibility for his actions and blamed others. He even

misrepresented material facts to his character witnesses in the disciplinary hearing and was not forthcoming with his own attorney. He, too, was precluded from seeking re-admission to the bar for a two-year period.

Like respondent, Czmus made multiple misrepresentations on multiple occasions. He was effectively suspended in New Jersey for a two-year period, although he was required to re-apply to the bar, rather than simply seek re-instatement. Interestingly, Czmus was disbarred in Pennsylvania for his misconduct. According to the parties' joint petition in respondent's matter, Czmus's behavior was more egregious than respondent's because Czmus had admitted that, for eighteen years, he was incapable of telling the truth in office documents and proceedings. The joint petition concluded that respondent's dishonesty did "not reach the magnitude or the time period which is present in *Czmus*."

For respondent's egregious conduct, we determine that he should be suspended for three years, the suspension to be consecutive to the one-year suspension imposed on him by the Supreme Court on February 27, 2008. Moreover, respondent shall be prohibited from seeking reinstatement in New Jersey until he is reinstated in Pennsylvania.

Member Stanton 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
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 Jose V. Bernardino
Docket No. DRB 08-232

Argued: November 20, 2008

Decided: December 23, 2008

Disposition: Three-year suspension

Members	Disbar	Three-year Suspension	Reprimand	Dismiss	Disqualified	Did not participate
Pashman		X				
Frost		X				
Baugh		X				
Boylan		X				
Clark		X				
Doremus		X				
Lolla		X				
Stanton						X
Wissinger		X				
Total:		8				1

Julianne K. DeCore
Julianne K. DeCore
Chief Counsel