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SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 07-238
District Docket No. XIV-06-064E

IN THE MATTER OF
ABAD A. PEREZ
AN ATTORNEY AT LAW

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Decision

Argued: October 18, 2007

Decided: December 12, 2007

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

Respondent, through counsel, waived appearance.

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

This matter came before us on a motion for final discipline filed by the Office of Attorney Ethics (OAE), following respondent's guilty plea in the Superior Court of New Jersey, Law Division, Hudson County, to fourth degree false swearing, in

violation of N.J.S.A. 2C:28-2a. The OAE requests the imposition of either a reprimand or a censure. Because we are equally divided on the discipline to be imposed (censure and three-month suspension), we submit this decision to the Court without a final determination in this regard.

Respondent was admitted to the New Jersey bar in 1987. At the relevant times, he maintained an office for the practice of law in Jersey City. He has no disciplinary history.

On September 16, 2005, Judge Melvin S. Krakov presided over a domestic violence hearing in the Superior Court of New Jersey, Hudson County, Chancery Division, Family Part, on a complaint filed by Abigail Gonzalez against respondent, who was Gonzalez's landlord. Gonzalez claimed that she and respondent had been dating since 2003, although she denied that he was her boyfriend.

The domestic violence action arose out of an altercation that took place between Gonzalez and respondent, when he went to her house to change the locks. As a result of the altercation, Gonzalez was arrested for simple assault and jailed for an outstanding warrant in an unrelated matter.

At the domestic violence hearing before Judge Krakov, Gonzalez testified that, when she was arraigned, respondent

(then the Jersey City chief municipal prosecutor) asked the prosecutor who appeared on behalf of the City to request an increase in Gonzalez's bail. The judge denied the request.

At the domestic violence hearing, the specifics of respondent's interaction with the prosecutor at the arraignment in Jersey City municipal court was the subject of the following exchange between respondent and his lawyer:

Q. Was the — was then the first occasion afterwards, after that incident, after the September 2 incident, where you saw Miss Gonzalez in court on September 6th?

A. She was being arraigned. I really didn't get to see her because another assistant prosecutor handled the case. I never spoke to a judge about her case. I never spoke to anybody about her case, except for Armando Molina, I was telling him look, she assaulted me and, you know, there was already a bail set on that.

THE COURT: To who?

Q. Who is —

THE COURT: Who did you speak to?

Q. Who did you speak to?

A. To Armando Molina, he's the first assistant prosecutor. I let him know about the case and there's already — bail was already set. It was just a matter of them posting bail. They didn't have the money to post bail.

THE COURT: He's the first assistant prosecutor with the Hudson County Prosecutor's Officer [sic]?

THE WITNESS: No, no. Jersey City Municipal.

THE COURT: All right.

THE WITNESS: This is all municipal court, Judge.

THE COURT: All right. Go ahead.

BY MS. ALCAIDE:

Q. And you never stated you wanted her - her bail increased at all?

A. I never said anything. Bail had already been set. Bail was set on September 2nd. It was set \$500 for the fact that she failed to appear and there was a 200-dollar bail for assaulting me.

[1T210-18 to 1T212-3.]¹

Judge Krakov dismissed the restraining order that Gonzalez had obtained against respondent, on the ground that Gonzalez did not prove that she had been a victim of domestic violence. Indeed, the judge was "not even sure she had a relationship of

¹ "1T" refers to volume 2 of the September 16, 2005 domestic violence hearing transcript in Abigail Gonzalez v. Abad Perez.

any kind with [respondent] sufficient for the Court to have jurisdiction in a family matter."

On January 10, 2006, respondent was indicted for, among other things, "falsely stat[ing] while under oath or equivalent affirmation, in substance and in effect . . . that he made no statements regarding a bail increase for Abigail Gonzalez and such statement ABAD PEREZ did not believe to be true, contrary to the provisions of N.J.S. 2C:28-2a, against the peace of this State, the Government and dignity of the same."² In June 2006, respondent was discharged from his prosecutor position.

On September 19, 2006, respondent pleaded guilty to the crime of fourth degree false swearing, forfeited his public office, and was admitted to the PTI program. At the plea hearing, the following exchange took place between respondent and his counsel:

Q. Mr. Perez, on or about September 16th, you testified before Judge Kracov [sic]. Is that correct?

² N.J.S.A. 2C:28-2a provides: "A person who makes a false statement under oath or equivalent affirmation, or swears or affirms the truth of such a statement previously made, when he does not believe the statement to be true, is guilty of a crime of the fourth degree."

A. That's correct.

Q. And that was a restraining order hearing?

A. That was a domestic violence hearing.

. . . .

Q. And you testified under oath that you never said anything to Armando Molina, the Jersey City first assistant municipal prosecutor, about increasing the bail for one Abigail Gonzalez on an assault case where you were the complainant and you were the victim. Is that correct?

A. That's correct.

Q. Okay. Now - and then on September the 6th, going back now to that incident of September 6th, in your capacity as the chief municipal prosecutor, you asked Mr. Molina to request a bail increase on that assault complaint against Abigail Gonzalez in which you were the victim. Is that correct?

THE DEFENDANT: That's correct.

. . . .

EXAMINATION BY [THE PROSECUTOR]:

Q. Specifically, the statement that you made to Judge Kracov [sic] on September 16th, 2005 was a lie, correct, Mr. Perez?

A. That's correct.

Q. You, in fact, told him that you did not ask Armando Molina to increase Ms. Gonzalez's bail, correct?

A. That's correct.

Q. But previously, on September the 6th, 2005, you had a conversation with Mr. Molina where you asked him to increase the bail on Abigail Gonzalez, correct?

A. That's correct.

[2T14-14 to 2T16-12.]³

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

A criminal conviction is conclusive evidence of guilt in a disciplinary proceeding. R. 1:20-13(c)(1); In re Maqid, 139 N.J. 449, 451 (1995); In re Principato, 139 N.J. 456, 460 (1995). Respondent's guilty plea establishes his violation of RPC 8.4(b). Pursuant to that rule, it is professional misconduct for an attorney to "commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer." Hence, the sole issue is the extent of discipline to be imposed. R. 1:20-13(c)(2); In re Maqid, supra, 139 N.J. at 451-52; In re Principato, supra, 139 N.J. at 460.

³ "2T" refers to the September 19, 2006 transcript of the plea in State of New Jersey v. Abad Perez.

In determining the appropriate measure of discipline, the interests of the public, the bar, and the respondent must be considered. "The primary purpose of discipline is not to punish the attorney but to preserve the confidence of the public in the bar." In re Principato, supra, 139 N.J. at 460 (citations omitted). Fashioning the appropriate penalty involves a consideration of many factors, including the "nature and severity of the crime, whether the crime is related to the practice of law, and any mitigating factors such as respondent's reputation, his prior trustworthy conduct, and general good conduct." In re Lunetta, 118 N.J. 443, 445-46 (1989).

That an attorney's conduct did not involve the practice of law or arise from a client relationship will not excuse the ethics transgression or lessen the degree of sanction. In re Musto, 152 N.J. 167, 173 (1997) (citation omitted). Offenses that evidence ethical shortcomings, although not committed in the attorney's professional capacity, may, nevertheless, warrant discipline. In re Hasbrouck, 140 N.J. 162, 167 (1995). The obligation of an attorney to maintain the high standard of conduct required by a member of the bar applies even to activities that may not directly involve the practice of law or

affect his or her clients. In re Schaffer, 140 N.J. 148, 156 (1995).

In addition to RPC 8.4(b), respondent's false swearing establishes a violation of RPC 3.3(a)(1) (knowingly making a false statement of material fact to a tribunal), RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation), and RPC 8.4(d) (conduct prejudicial to the administration of justice).⁴ Thus, the only determination that we are required to make is the quantum of discipline to be imposed for the misconduct. R. 1:20-13(c)(2); In re Lunetta, supra, 118 N.J. at 445.

I. View of Members for a Three-Month Suspension

In our view, respondent's misconduct clearly warrants a three-month suspension. Respondent did not simply make a misrepresentation to a tribunal. He lied under oath. Moreover, at the time, he held a position of public trust, as the Jersey

⁴ The OAE asserts that respondent also violated RPC 3.3(a)(5). That rule is inapplicable, however, because it applies to a lawyer's failure to disclose a material fact to a tribunal. Here, respondent did not fail to disclose a fact. Rather, he made a false statement of material fact.

City Chief Municipal Prosecutor. See In re Magid, 139 N.J. 449, 455 (1995).

Attorneys who lie under oath in court have received three-month suspensions. See, e.g., In re Coffee, 174 N.J. 292 (2002) (motion for reciprocal discipline; attorney submitted a false affidavit of financial information in his own divorce case, followed by his misrepresentation at a hearing under oath that he had no assets other than those identified in the affidavit), and In re Brown, 144 N.J. 580 (1996) (during the trial in the plaintiff-hospital's collection suit for recovery of expenses incurred in the treatment of the attorney's drug and alcohol dependency, the attorney testified untruthfully that he had never used cocaine, had never been treated for cocaine dependency, and that his treatment at the hospital had been limited to alcoholism and for fewer than the number of days billed).

For a three-month suspension: Members Stanton, Frost, Neuwirth, and Wissinger.

II. View of Members for a Censure

We agree that respondent lied under oath and that, ordinarily, a three-month suspension is imposed for misconduct

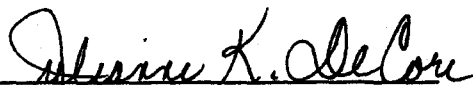
of this type. Nevertheless, we believe that the forfeiture of respondent's position as municipal prosecutor is a mitigating factor sufficient to reduce the ordinary measure of discipline from a three-month suspension to a censure.

For a censure: Chair O'Shaughnessy, Vice-Chair Pashman, and Members Boylan and Baugh.

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
Chair

By: 
Julianne K. DeCore
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

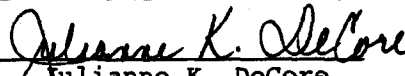
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Disposition: Three-month suspension/censure

Members	Three-month Suspension	Censure	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:	4	4			1


Julianne K. DeCore
Chief Counsel