SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 06-242
District Docket No. XIV-06-197E

IN THE MATTER OF	:
DREW K. KAPUR	:
AN ATTORNEY AT LAW	:

Decision

Argued: October 19, 2006

Decided: November 20, 2006

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

Joel B. Korin appeared on behalf of respondent.

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

This matter came before us on a motion for final discipline filed by the Office of Attorney Ethics (OAE), following respondent's guilty plea to the disorderly persons offense of volunteering false information to a law enforcement officer for

the purpose of hindering the apprehension, prosecution, conviction or punishment of another for an offense, a violation of N.J.S.A. 2C:29-3a(7). In short, after respondent's son was involved in a one-car accident, respondent switched places with him at the scene and misrepresented to the police that it was he, not the son, who had been driving the car. We determine to impose a censure.

Respondent was admitted to the New Jersey bar in 1982. He is a Duane Morris LLP partner, based at the firm's Hamilton, Mercer County office. Respondent has no disciplinary history.

On October 16, 2005, at approximately 3:20 am, Patrolman M. McLean of the Delran Township Police Department was dispatched to the scene of a one-car accident. The police had been alerted to the accident by a caller, who claimed that the driver of the vehicle had fled the scene.

At the scene, McLean observed that the car had run off the road into a light pole, which had been "knocked down completely." About a dozen neighborhood residents were there, as well as an individual who was kneeling down inside the driver side door, examining papers.

The residents confirmed that the driver had fled the scene. However, when McLean asked them to describe him, respondent, who

was the person kneeling inside the car door, turned and stated that he had been driving the car. When McLean asked respondent if he had left the scene of the accident, respondent replied "yes," and explained that he had run home to get his wallet.

McLean asked respondent what had happened. Respondent told McLean that he had gone to the 7-11 to "get something," but realized that he did not have his wallet with him. On his way home, he "began to fiddle with the radio," and ran off the road.

One of the residents told McLean that the driver who fled the scene appeared younger than respondent and was wearing different clothing. According to the resident, the driver wore "what appeared to be a Khaki colored shirt." Respondent wore a blue shirt.

McLean asked respondent several more times if he was the driver. Each time, respondent replied "yes." McLean warned respondent that, if it were determined that he had hindered the apprehension of the actual driver, he would be charged with that offense. Apparently unmoved, respondent asked if he could retrieve some items from the car. McLean issued respondent a summons for careless driving (N.J.S.A. 39:4-97), action in case of accident (N.J.S.A. 39:4-129), and unregistered vehicle (N.J.S.A. 39:3-4).

Contrary to respondent's misrepresentations to McLean, it was respondent's son Craig who had been driving the car, crashed it, and fled the scene of the accident. When Craig fled, he ran home, woke respondent, and told him what had happened. Respondent "got dressed, left the house, walked to the scene and discovered a one car accident where the car was more damaged than he had expected." Other damaged property included the light pole, shrubs, railroad ties (used in landscaping), and a cable box.

According to respondent's attorney, Joel B. Korin, respondent "sought counsel within a very short period of time after the initial ticket . . . on how to 'make this right.'" Korin stated that respondent first consulted with an attorney either in late October or early November 2005, but that the attorney declined the representation due to a conflict of interest. In late November/early December 2005, respondent retained Ballard Spahr Andrews & Ingersoll, where Korin is of counsel. At the same time, respondent's son retained Carl D. Poplar.

In mid-December 2005, Poplar attempted to set up a meeting among the municipal prosecutor, the Kapurs, and their attorneys "concerning the actual facts surrounding this ticket." However,

the prosecutor declined to meet with them until the scheduled February 1, 2006 court appearance.

At the February 1, 2006 meeting with the prosecutor, the police chief and the prosecutor were informed that Craig was the driver of the vehicle. At the chief's request, the court appearance was postponed.

In March 2006, respondent read the following statement, under oath, into the record:

> On Sunday, October 16, 2005 at approximately 3:00 a.m., I was sleeping in my home, 144 Whitemarsh Way, Delran. My son, Craig Kapur, came home and told me he was involved in a motor vehicle accident on Waterford Drive. I went to the scene of the accident and told a Delran police officer that it was me [sic] who was driving the car that was involved in the accident. I also said I left the scene to go get my license and then returned.
>
> These statements were untrue.
>
> [Ex.C.]

As a result of respondent's statement, on March 7, 2006, he was charged with the disorderly persons offense of volunteering false information to a law enforcement officer for the purpose of hindering the apprehension, prosecution, conviction or punishment of another for an offense (N.J.S.A. 2C:29-3A(7)).

On April 24, 2006, respondent appeared before Judge Richard E. Andronici, in the Delran Township Municipal Court, and pled guilty to the charge. In respondent's defense, his lawyer stated:

> Yes. Your Honor, with respect to this. After this unfortunate mistake by my client, we came to court. We advised the court and the Prosecutor of the true facts. The tickets that were originally issued to Mr. Kapur were amended.
>
> He knew this charge was coming.
>
> He is contrite. He's apologetic, and he has never been in any trouble before, and I assure you, Your Honor, he will never be in any trouble again.
>
> [Ex.F3.]

The prosecutor submitted to defense counsel's request that the Court impose the minimum fine and costs. Judge Andronici labeled the incident "unfortunate" and noted that respondent, who had no criminal history, had "stepped forward and acknowledged responsibility." The judge imposed $365 in fines, costs, and penalties. The OAE requests the imposition of a censure.

Final discipline proceedings in New Jersey are governed by R. 1:20-13(c). Under the rule, criminal or quasi-criminal

conduct is deemed conclusively established by any of the following:

> a certified copy of a judgment of conviction, the transcript of a plea of guilty to a crime or disorderly persons offense, whether the plea results either in a judgment of conviction or admission to a diversionary program, a plea of no contest, or nolo contendere, or the transcript of the plea.

The rule authorizes the OAE to file a motion for final discipline upon the conclusion of a criminal matter (up through the appellate level) "involving findings or admissions of guilt." R. 1:20-13(c)(2). In this case, respondent was sentenced after a guilty plea, and the OAE has provided us with a copy of the plea transcript. Therefore, pursuant to R. 1:20-13(c), respondent's criminal conduct is conclusively established. R. 1:20-13(c)(1); In re Gipson, 103 N.J. 75, 77 (1986).

RPC 8.4(b) states that "[i]t is professional misconduct for a lawyer to . . . commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects." An attorney who commits a crime violates RPC 8.4(b). In re Margrabia, 150 N.J. 198, 201 (1997).

That respondent's convictions do not relate directly to the practice of law does not negate the need for discipline. The primary purpose of imposing discipline is not to punish the attorney. In re Gallo, 178 N.J. 115, 122 (2003). Rather, "the purpose of the disciplinary review process is to protect the public from unfit lawyers and promote public confidence in our legal system." Ibid. Even a minor violation of the law may lessen public confidence in the legal profession. In re Addonizio, 95 N.J. 121, 124 (1984). As the Supreme Court has explained:

> In addition to the duties and obligations of an attorney to his client, he is responsible to the courts, to the profession of the law, and to the public[.] He is bound even in the absence of the attorney-client relation to a more rigid standard of conduct than required of laymen. To the public he is a lawyer whether he acts in a representative capacity or otherwise.
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> [In re Gavel, 22 N.J. 248, 265 (1956) (citations omitted).]

Accord In re Katz, 109 N.J. 17, 23 (1987).

Respondent's guilty plea to volunteering false information to a law enforcement officer for the purpose of hindering the apprehension, prosecution, conviction or punishment of another for an offense establishes a violation of RPC 8.4(b).

The remaining determination is the quantum of discipline to be imposed for respondent's offense. R. 1:20-13(c)(2); In re Lunetta, 118 N.J. 443, 445 (1989). The OAE requests the imposition of a censure. In the OAE's view, respondent's misconduct "seems to fall somewhere in between that" of the attorneys in In re Gonzalez, 142 N.J. 482 (1995) (reprimand), and In re Poreda, 139 N.J. 435 (1995) (three-month suspension). Respondent, on the other hand, urges the imposition of an admonition, arguing that (1) his conduct involved "less planning and a mens rea" than the attorneys in Gonzalez and Poreda, and that (2) mitigating circumstances warrant lesser discipline.

A comparison of Gonzalez and Poreda with this matter leads to the conclusion that respondent's conduct should not, as respondent asserts, be met with only an admonition. Rather, a censure is the more appropriate measure of discipline for respondent's criminal offense.

In Gonzalez, the attorney pled guilty to the disorderly persons offense of obstructing the administration of law (N.J.S.A. 2C:29-1). In that case, a police officer stopped the attorney for speeding. The attorney showed the officer a valid vehicle registration and insurance card, together with a driver's license bearing the name Juan B. Ramirez. The attorney

told the officer that he was returning from a court appearance. He also stated that the vehicle was registered in the name of his cousin, Susan Gonzalez.

The officer observed that the insurance card identified Ralph A. and Susan M. Gonzalez as the insured individuals. At the same time, however, he saw that the vanity plate on the car read "RAG ESQ," and that the initials "RAG" also appeared on a ring worn by the attorney. After "various inquiries about such coincidences," the attorney confessed that the driver's license he had produced did not belong to him, but rather to his cousin. The attorney stated that he had been using his cousin's license "for several weeks," as he feared the loss of his driving privileges due to the number of points he had accumulated.

After the attorney pled guilty to obstructing the administration of law or other governmental function and speeding, the OAE filed a motion for final discipline and sought a reprimand. We concluded, however, that the attorney should receive a three-month suspension.

In reaching our determination, we rejected the OAE's contention that the attorney's conduct was analogous to an attorney's misrepresentation of the status of a lawsuit to a client or a misrepresentation to a court. Instead, we

concluded, the attorney's misconduct "more closely parallel[ed] cases involving a specific intent to mislead a police officer." After citing three cases in which attorneys received suspensions for such conduct, we unanimously determined to impose a three-month suspension. The Supreme Court disagreed with us and, instead, imposed a reprimand.

In Poreda, a police officer stopped the attorney for running a red light. At the time, he was driving a vehicle that he had purchased a few days earlier and that replaced his older, insured vehicle. However, the attorney had not yet notified his insurance agent of the change and, therefore, did not have a corrected or valid insurance card for the new vehicle.

The police officer issued the attorney a summons for driving an uninsured vehicle. At the scheduled court appearance, the attorney approached the officer prior to the case being called and produced an insurance identification card purportedly showing that the car was insured on the date that the citation was issued. The officer then represented to the court that the attorney had produced what appeared to be a valid identification card. The attorney remained silent; the charge was dismissed.

When, after the appearance, the officer attempted to verify the existence of the insurance, he learned that neither the broker nor the insurance company identified on the insurance card had issued it. The attorney was then charged with forgery and/or possession of a forged insurance identification card, a first degree misdemeanor. He pled guilty and was admitted into Pennsylvania's equivalent to New Jersey's PTI program.

The district ethics committee filed a complaint charging respondent with violations of RPC 8.4(b), (c), and (d). The attorney admitted to the conduct described above, but maintained, in mitigation, that "his actions were attributable to some extent to a multitude of personal problems he was experiencing, culminating in severe depression and ultimately resulting in his involuntary commitment." In addition, he had undergone hip replacement surgery, which ended his participation in competitive tennis, and he had gone through a devastating divorce. A doctor opined that the attorney's forgery of the insurance card was "at least partially influenced by his mental illness [bipolar disorder]."

We concluded that the attorney had violated RPC 8.4(a) (violating or attempting to violate the RPCs), RPC 8.4(b), RPC 8.4(c), and RPC 8.4(d), and voted to impose a three-month

suspension for the attorney's misconduct. In reaching this conclusion, we noted, on the one hand, his forgery of a document, which he presented to a police officer and to the court for the purpose of having the charges against him dismissed, and the premeditated nature of the misconduct. On the other hand, we considered the attorney's ready admission of the wrongdoing, the mitigating factors, and the likelihood that the conduct was "a single instance of aberrant behavior, unlikely to be repeated." The Supreme Court accepted our determination and suspended the attorney for three months.

Although, in Gonzalez, the Supreme Court did not explain its rejection of our recommended three-month suspension in favor of the imposition of a reprimand, it is possible that the Court considered Gonzalez's admission of wrongdoing to the officer when he was stopped. Once the officer became suspicious of his story, Gonzalez immediately confessed to the ruse he had planned. Poreda, on the other hand, never admitted his wrongdoing. Instead, he forged the insurance identification card after he had been stopped and ticketed for failing to produce it. He then used the forged document to convince the police officer and the municipal court that his car had, in fact, been insured at the time he was stopped.

Here, we do not believe that respondent deserves a suspension. Admittedly, by misrepresenting to Officer McLean that he was behind the wheel at the time of the accident, and allowing the officer to issue summonses based upon that misrepresentation, respondent, like Poreda, created a situation where the wheels of justice would proceed to roll down the wrong path. In this matter, however, and unlike in Poreda, respondent owned up to his misconduct before the court appearance; the summonses issued to him were dismissed; the correct summonses were issued to him and his son; and justice ultimately was served. We agree, thus, with the OAE that respondent should not be suspended.

Just as a suspension would be too severe, in our view, an admonition would be insufficient discipline in this case. Respondent argues that he should be admonished because his misconduct was not premeditated, and because mitigating factors militate against the imposition of greater discipline. First, respondent asserts, the attorneys in Gonzalez and Poreda "preplanned the deception that was the subject of the discipline." He, on the other hand, "made an unfortunate snap decision, when called to the scene of an accident at 3:00 a.m."

Second, respondent argues, many mitigating factors apply: (1) his admission of wrongdoing; (2) his contrition and remorse; (3) his cooperation with disciplinary authorities; (4) the lack of injury to a client; (5) the absence of a disciplinary history; (6) the unlikelihood of repeat offenses; (7) the isolated nature of the incident; (8) the absence of personal gain; and (9) subsequent remedial measures.

We are unable to agree with respondent that his misrepresentation was not premeditated. To be sure, his premeditation did not rise to the level of that of the attorneys in Gonzalez and Poreda. Nevertheless, respondent made a conscious decision to lie and had time to think about it before doing so. We are mindful that respondent was awakened in the middle of the night with his son's news of the accident. However, the accident was not in front of respondent's house. He had to travel to the scene of the accident. Under the circumstances, he had sufficient time to reflect on his planned behavior.

Even if we were to determine that respondent's misrepresentation was not premeditated, an admonition still would not be appropriate. A misrepresentation in any context typically results in the imposition of at least a reprimand.

The Court has consistently imposed reprimands for misrepresentations to clients, disciplinary authorities, and the courts. See, e.g., In re Kasdan, 115 N.J. 472, 488 (1989) (reprimand for intentionally misrepresenting to a client the status of a lawsuit); In re Sunberg, 156 N.J. 396 (1998) (reprimand for lying to the OAE about the fabrication of an arbitration award and also failing to consult with a client before permitting two matters to be dismissed; mitigating factors included the attorney's unblemished disciplinary record, the passage of time since the incident, the lack of personal gain and harm to the client, the aberrational nature of the misconduct, and his remorse); In re Powell, 148 N.J. 393 (1997) (reprimand for misrepresenting to the district ethics committee that an appeal had been filed, as well as engaging in gross neglect, lack of diligence, and failure to communicate with his client); In re Manns, 171 N.J. 145 (2002) (reprimand for misrepresenting, in a certification in support of a motion, the date on which the attorney learned that the complaint had been dismissed; attorney also was guilty of lack of diligence, failure to expedite litigation, and failure to communicate with the client); and In re Kantor, 165 N.J. 572 (2000) (reprimand for misrepresenting to a municipal court judge that the

attorney's vehicle was insured on the date it was involved in an accident when, in fact, the policy had lapsed for nonpayment of premium).

On the rare occasion when an admonition has been imposed for a misrepresentation, the attorney involved had directly and immediately admitted and corrected the misrepresentation. See, e.g., In re McGivney, DRB 01-060 (March 18, 2002) (attorney signed his superior's name to an affidavit in support of an emergent wiretap application moments before its review by the court; the attorney knew at the time that the court might be misled by his action; in mitigation, the attorney brought the matter to the court's attention the next day, had an unblemished disciplinary record, was authorized to make the application, and was motivated by the pressure of the situation rather than venality); and In re Lord, DRB 01-250 (September 24, 2001) (attorney who represented a client using an alias in municipal court failed to inform the court of his real name; the next day, the attorney notified the court of her client's actual name).

Here, respondent did not call the police or the prosecutor the next day to set the record straight. In fact, he did not remedy his wrongdoing within a reasonable period of time. He waited at least a few weeks before even attempting to retain

counsel and then waited a few more weeks before consulting with a different lawyer after the first attorney was conflicted out.

Moreover, we are not entirely persuaded that respondent adequately expressed remorse or contrition for his actions. When he gave the statement under oath that he had made untrue statements, respondent expressed no remorse. When he entered his guilty plea, respondent expressed no remorse. The only evidence of respondent's contrition and remorse came through his attorney at the plea, when he told the court that respondent was "contrite" and "apologetic."

Having concluded that an admonition is insufficient discipline, the remaining question is whether respondent's conduct merits a reprimand. We believe that is does not.

Despite respondent's admission of wrongdoing before the court appearance, the circumstances and timing were such that a reprimand would not reflect the seriousness of his misdeed. In Gonzalez, which resulted in a reprimand, the attorney admitted his wrongdoing at the scene of the traffic stop, thereby avoiding the consequence of having his misrepresentations lead the officer to issue either no ticket or a ticket based upon inaccurate facts. Such was not the case with respondent. He never came clean at the scene. Instead, in the face of the

officer's repeatedly asking him if he was the driver and the warning of the consequences of a mistruth, respondent remained steadfast in his lie, thereby leading the officer to issue traffic tickets to the wrong person.

Again, unlike Gonzalez, who corrected the misrepresentation at the scene, nearly two months had passed before any attempt was made to meet with the prosecutor to set the record straight.

Respondent seeks to avoid accountability for this delay on the ground that the matter was in the hands of his lawyer, whom he was not able to retain until late November or early December 2005. Respondent, however, did not even seek counsel until at least two weeks after the incident. When his first attempt at seeking counsel failed, he then waited several more weeks before retaining Korin. It certainly was respondent's right to seek and retain counsel. In making that choice, however, he also made the decision not to immediately correct his misrepresentation to McLean. Two months elapsed between the date of his misrepresentation and the first attempt to rectify the untruth.

We agree, thus, with the OAE that respondent's misconduct falls somewhere between that of the attorneys in Gonzalez and

Poreda and determine that a censure is the appropriate degree of discipline in this matter.

Member Neuwirth did not participate.

We further require respondent to reimburse the Disciplinary Oversight Committee for administrative costs.

Disciplinary Review Board
William J. O'Shaughnessy
Chair

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

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Drew K. Kapur
Docket No. DRB 06-242

Argued: October 19, 2006

Decided: November 20, 2006

Disposition: Censure

Members	Disbar	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:			8			1

Julianne K. DeCore
Chief Counsel