

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board ^
Docket No. DRB 01-373 \

IN THE MATTER OF :
K. KAY SHEARIN :
AN ATTORNEY AT LAW :
:

Decision

Argued: November 15, 2001

Decided: February 19, 2002

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

Respondent waived appearance for oral argument.

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

This matter was before us on a motion for reciprocal discipline filed by the Office of Attorney Ethics (“OAE”), pursuant to R.1:20-14, following a decision by the Supreme Court of Delaware to suspend respondent for a period of three years, retroactive to January 1, 1999.

Respondent was admitted to the New Jersey bar in 1980. On March 9, 2001, on a motion for reciprocal discipline, respondent was suspended for a one-year period, effective July 17, 2000, for violations of RPC 3.3(a)(1) (making a false statement of material fact or law to a tribunal), RPC 3.5(c) (conduct intended to disrupt a tribunal), RPC 1.2(d) (assisting a client in conduct that the lawyer knows is criminal or fraudulent), RPC 3.1 (bringing a non-meritorious claim), RPC 3.2 (failure to expedite litigation), RPC 3.3(a)(4) (failing to disclose to a tribunal legal authority in the controlling jurisdiction, known to the lawyer to be directly adverse to the client's position and not disclosed by opposing counsel), RPC 3.4(b) (falsifying evidence or assisting or counseling a witness to falsely testify) and RPC 4.1(a)(1) (making a false statement of material fact or law to a third person). In re Shearin, 166 N.J. 558 (2001).

For a better understanding of the violations before us, it is necessary to review the conduct that lead to respondent's one-year suspension for her actions in the Delaware courts. That conduct is set forth in the Supreme Court of Delaware's decision:

On September 1, 1998, the Office of Disciplinary Counsel ('ODC') filed a Petition for Discipline against Shearin. The Petition alleged six violations of the [Delaware Lawyers' Rules of Professional Conduct] DLRPC by Shearin. The events which led to the ODC's charges against Shearin arose from Shearin's role in litigation, which commenced in 1991, concerning the ownership and governance of certain church properties located in Wilmington, Delaware and elsewhere. The parties involved in that litigation were the Mother African Union First Colored Methodist Protestant Church ('Mother Congregation'), the Conference of African Union First Colored Methodist Protestant Church ('AUMP Church'), and its President Prelate, Delbert L. Jackson ('Bishop Jackson'). (Footnote omitted). Shearin was the attorney for the Conference and Bishop Jackson in that litigation.

That litigation resulted in the entry of a final judgment ('Final Judgment') on February 24, 1993 which denied the claims of Shearin's clients, the AUMP Church and Bishop Jackson, and upheld the claims of the plaintiff, the Mother Congregation and its members. The Court of Chancery held that the church properties in question belonged to the Mother Congregation, its Trustees and its members. The Court of Chancery issued a final injunction restraining the AUMP Church from interfering with the use and enjoyment of the properties by the Mother Congregation and its members and also invalidated a deed that purported to transfer the church properties from the Mother Congregation to the AUMP Church. The Court of Chancery's Order also imposed sanctions on Shearin under Chancery Court Rule 11 and ordered her to pay \$459.00 to the plaintiffs' attorneys.

On July 13, 1995, the Court of Chancery entered an Order finding Shearin in civil contempt of court for violating the terms of the Final Judgment. The Court of Chancery transmitted its Memorandum Opinion and Order to the ODC for it to 'consider appropriate disciplinary measures against Ms. Shearin, whose pattern of behavior in this case raises serious questions as to her willingness to abide by the standards of conduct expected of attorneys who practice before this Court.' On September 22, 1995, the Court of Chancery entered an Order finding Shearin in civil contempt for conduct that the Court found to be in violation of the Court's July 13, 1995 Order. The Court's Order also directed that a copy of the Order be transmitted to the ODC 'to take such disciplinary action against [Shearin] as it deems appropriate.' These two referrals to ODC led to the initiation of three separate disciplinary proceedings against Shearin, which resulted in the imposition of a one-year suspension from the practice of law. [See In re Shearin, Del. Supr., 721 A.2d 157 (1998) (per curiam), cert. denied, 522 U.S. 1122 (1999) ('Shearin I').]

A more recent Delaware disciplinary case imposed a three-year suspension against respondent. The conduct in that matter involved similar behavior on respondent's part and arose from the same underlying matter. The facts giving rise to respondent's misconduct are also set forth in the Delaware Supreme Court's decision:

The pending ODDC Petition arose from a lawsuit filed by Shearin, *pro se*; and Bishop Jackson on February 26, 1997 in the U. S. District Court for the District of Columbia (the 'Shearin Lawsuit'). The claims asserted in the Shearing Lawsuit were brought under the federal civil rights laws, 42

U.S.C. §§ 1983 and 1985 and sought monetary damages as well as injunctive relief. The named defendants included individual trustees of the Mother Congregation, attorneys who had represented the Mother Congregation, several Superior Court Judges, two Vice-Chancellors, most current and former Justices of the Delaware Supreme Court, some U.S. District Court judges and judges of the Third Circuit Court of Appeals, one attorney employed by the ODC, and a United States Senator.

In the complaint, Bishop Jackson alleged that defendant Jarman had conspired with other named defendants to 'break up the AUMP Church' and to 'take its church buildings and land away from it.' Bishop Jackson also alleged that various named defendants had engaged in a conspiracy to deprive Jackson and the AUMP Church members of church properties (hereinafter 'Jackson Claims').

In claims that were unrelated to Bishop Jackson's claims concerning the church and its properties, Shearin alleged that one defendant, then a United States District Court Judge: unlawfully refused to authorize payments to Shearin for services she had rendered as a court-appointed attorney under the Criminal Justice Act, 18 U.S.C. § 3006A; had induced other federal judges in the District of Delaware to do the same; had caused Shearin's name to be removed from the panel of attorneys who were eligible for CJA appointments in Delaware; and had unlawfully induced other Delaware District Court judges to dismiss all the cases in which Shearin was involved as an attorney for the plaintiff. Shearin alleged that the judge in the Court of Chancery proceedings 'suffered a progressive mental disability' which caused him to 'exhibit mood swings and injudicious conduct, including hostility to litigants and court personnel.' Shearin also alleged that the same jurist 'had induced other Delaware judges to ratify his rulings in the AUMP church cases, even when those rulings were contrary to the evidence before the courts and to the controlling law.' Lastly, Shearin alleged that several of the named defendants had 'defamed' Shearin in various publications and legal proceedings.

In a Memorandum Opinion and Order dated January 27, 1998, all of the claims set forth in the Shearin Lawsuit were dismissed for lack of subject matter jurisdiction under the *Rooker-Feldman* doctrine.¹ In

¹ "Under the *Rooker-Feldman* doctrine, lower federal courts cannot entertain constitutional claims that have been previously adjudicated in state court or that are inextricably intertwined with such a state adjudication." *Gulla v. North Strabane Township*, 3rd Cir., 146 F.3d 168 (1998); see *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462 (1983); *Rooker v. Fidelity Trust Co.*, 263 U.S. 413 (1923).

dismissing the claims concerning the AUMP Church and its properties, the federal trial judge in the District of Columbia stated the following:

A review of the relief sought by plaintiffs demonstrates that in effect plaintiffs seek the same relief they were unable to obtain in the prior lawsuits . . . the court concludes that the plaintiffs underlying constitutional claims are 'inextricably intertwined' with the previous state court judgments. This case presents allegations already entertained and decided in various state court actions . . . The relief plaintiffs seek is precisely what the *Rooker-Feldman* doctrine bars. Accordingly, this court lack [sic] subject matter jurisdiction over such claims

The court also dismissed Shearin's claims against the defendant, Delaware District Court Judge:

They are, for the reasons already stated, without merit and shamefully frivolous. Indeed the record in this case suggests that bringing these claims represents a pattern and course of conduct worthy of consideration for action by the State of Delaware Bar Disciplinary Counsel.

On May 9, 2001, the Delaware Supreme Court suspended respondent for a three-year period retroactive to January 1, 1999. In imposing the suspension, the court noted the following aggravating factors:

- (1) The Respondent has substantial experience in the practice of law having been a member of the bar since 1986.
- (2) The Respondent has a pattern of the same or similar misconduct.
- (3) The Respondent's continued refusal to acknowledge the wrongful nature of her conduct and [sic] has no remorse for her behavior.
- (4) The Respondent's bad faith obstruction of the disciplinary system by intentionally failing to comply with the Board's procedural rules.
- (5) Respondent's prior disciplinary record consisting of a suspension on December 10, 1998 from the practice of law for a period of one year stemming from similar charges.

(6) Respondent's continuous degrading of judicial officers in personal terms questioning their mental capacity and allegations of conspiracy.

The OAE argued that respondent's repeated misconduct warrants a three-year suspension in New Jersey for her violations of RPC 3.1 (bringing a proceeding that the lawyer knows or reasonably believes there is no basis for doing so or that is frivolous), RPC 3.4(c) (knowingly disobeying an obligation under the rules of a tribunal), RPC 8.2 (making a statement that the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications of a judge or other public legal officer) and RPC 8.4(d) (conduct prejudicial to the administration of justice). The OAE relied on In re Smith, 148 N.J. 375 (1997) (three-year suspension where attorney repeated behavior for which he had previously received a one-year suspension; the Court adopted our finding that the attorney's failure to amend his practices in the face of past and pending disciplinary proceedings was a serious aggravating factor, showing that he had refused to learn from his mistakes) and In re Schiff, 156 N.J. 401 (1998) (eighteen-month suspension where attorney submitted an exaggerated claim for attorney's fees to a Rhode Island court).

The OAE stated that, because Delaware's three-year suspension was made retroactive to the date of respondent's one-year suspension, the discipline here, too, should be made retroactive to the effective date of her one-year New Jersey suspension, July 17, 2000.

* * *

Following a de novo review of the full record, we determined 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 upon which the Board rests for purposes of a disciplinary proceeding), we adopt the findings of the Supreme Court of Delaware.

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

[t]he 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 misconduct established warrants substantially different discipline.

We agree with the OAE that a review of the record does not reveal any conditions that would fall within sections (A) through (E). We are, therefore, bound by the Supreme Court of Delaware's findings that respondent's conduct violated the following rules: RPC 3.1 because the "Shearin Lawsuit" sought the same relief she was unable to obtain in prior lawsuits and the underlying constitutional claims were inextricably intertwined with previous state court actions; RPC 3.4(c) because respondent knowingly disobeyed

the Chancery Court's order expressly enjoining "her and her client from interfering with the quiet title, operation, use, enjoyment and governance of the church properties and from holding themselves out as having any ownership interest in those properties;" RPC 8.2 because she demonstrated a reckless disregard for the truth when she made statements characterizing the mental health of the vice-chancellor; and RPC 8.4(d) because the prosecution of the "patently frivolous" lawsuit and appeal over many months caused two federal courts, many judicial defendants and many other members of the legal system to waste time and resources on matters lacking in legal merit.

Respondent's conduct was not an isolated act. Her prior discipline is evidence of her repetitious, improper acts. The Supreme Court of Delaware cited the ODC's petition for discipline, which states that the "Shearin suit" required the federal district court to review 200 pleadings and amendments on charges that had already been finally determined by the courts of the State of Delaware. This circumstance underscores the seriousness of respondent's ethics violations.

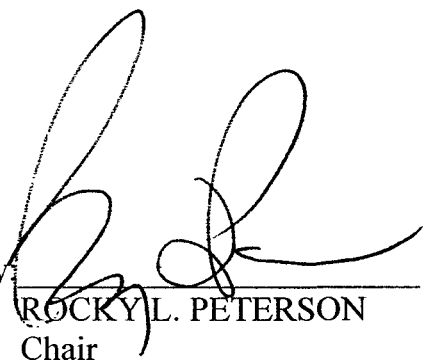
There is no precedent in this state for similar misconduct. In the Delaware action, the Supreme Court relied on a matter in which a three-year suspension had been imposed, based primarily on a finding that the attorney had engaged in repetitive conduct and refused to admit the wrongfulness of his conduct. In the Matter of Lassen, Del.Supr. 672 A.2d 988 (1996). That attorney had received a prior admonition for his unethical billing practices in 1982 and again in 1992. The Delaware Supreme Court also noted the attorney's lack of remorse for his misconduct. Here, respondent's continuing attempts to relitigate the matter, her lack of remorse for her conduct and her prior discipline warrant

the imposition of the identical discipline imposed by the Supreme Court of Delaware, under R.1:20-14(a).

Based on the foregoing, six members voted to impose a three-year suspension, retroactive to July 17, 2000. Two members voted for dismissal, finding that respondent did not intend to file a frivolous suit. These members believed that respondent's conduct should have been handled by the Delaware courts within the context of the underlying case. One member did not participate.

We also determined to require respondent to submit, prior to her reinstatement, proof of fitness to practice law, as attested by a mental health professional approved by the OAE.

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

By: 
ROCKY L. PETERSON
Chair
Disciplinary Review Board

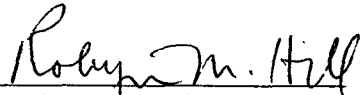
**SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD**

In the Matter of K. Kay Shearin
Docket No. DRB 01-373

Decided: February 19, 2002

Disposition: three-year suspension

<i>Members</i>	<i>Disbar</i>	<i>Three-year Suspension</i>	<i>Reprimand</i>	<i>Admonition</i>	<i>Dismiss</i>	<i>Disqualified</i>	<i>Did not participate</i>
Peterson		X					
Maudsley					X		
Boylan		X					
Brody		X					
Lolla		X					
O'Shaughnessy					X		
Pashman		X					
Schwartz							X
Wissinger		X					
Total:		6			2		1

 3/13/02
Robyn M. Hill
Chief Counsel