SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 00-127

IN THE MATTER OF

TERRY L. SHAPIRO

AN ATTORNEY AT LAW

Decision

Argued: July 20, 2000

Decided: January 31, 2001

Walton W. Kingsbery, III appeared on behalf of the Office of Attorney Ethics.

Lawrence S. Lustberg appeared on behalf of respondent.

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

This matter was before us based on a recommendation for discipline filed by Special Master Steven Menaker. The complaint charged respondent with violations of *RPC* 3.3(a)(1)

(false statement of material fact or law to a tribunal), *RPC* 3.3(a)(5) (failure to disclose to a tribunal a material fact with knowledge that the tribunal may be misled by such failure), *RPC* 8.4(a) (violation of, or attempt to violate, the *Rules of Professional Conduct*, knowingly assist or induce another to do so, or do so through the acts of another) and *RPC* 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation).

Respondent was admitted to the New Jersey bar in 1974. He maintains a law office in Newark, Essex County, New Jersey. In 1988 he received a private reprimand for breaching client confidentiality, in violation of *RPC* 1.6(a). On December 1, 1994 he was suspended for six months for negligent misappropriation of client funds, in violation of *RPC* 1.15, conduct involving deceit and misrepresentation, in violation of *RPC* 8.4(c), and conduct prejudicial to the administration of justice, in violation of *RPC* 8.4(d).

* * *

Most of the facts in this matter are not disputed. Respondent acknowledged that, in connection with civil litigation, he submitted a false certification of services to his adversary, an attorney representing an insurance company. The Office of Attorney Ethics ("OAE") alleged that respondent's actions misled both his adversary and the judge before whom the settlement was presented. Respondent contended that, although the certification was

inaccurate, he actually understated the number of hours he worked on the file and the misrepresentation was not material. He further argued that, because the certification was not presented to the court, he did not violate *RPC* 3.3(a)(1) or (5). Respondent and the OAE entered into a stipulation of facts, as follows:

1. The respondent, Terry L. Shapiro, was admitted to the bar of the State of New Jersey in 1974.

2. Respondent is presently engaged in the private practice of law with law offices located at 17 Academy Street, Suite 800, Newark, New Jersey.

3. In June 1995, respondent became affiliated with the law firm of BROSS, STRICKLAND, CARY, GROSSMAN & ICAZA, P.A.

4. At that time, respondent represented Keith C. Campbell in a personal injury suit arising from an automobile accident on June 1, 1990 (hereinafter, 'the Tort Action').

5. The Tort Action settled for approximately $200,000.

6. During the course of the Tort Action, Campbell's insurance company refused to pay many of Campbell's medical bills.

7. On August 31, 1994, respondent filed a PIP coverage suit on his client's behalf entitled, Keith Campbell v. H.C.M. Claim Management Corp., Superior Court of New Jersey, Law Division, Essex County, Docket No. ESX-L-11796-94.

8. HCM filed an answer on November 16, 1994.

9. HCM filed a motion for summary judgment, based upon the contention that the claims were untimely.

10. Respondent filed opposition to defendant's motion for summary judgment, including a brief and certification, and cross-moved for summary judgment.

11. After telephone discussions between counsel, both motions were withdrawn.

12. Counsel for HCM then advised respondent that HCM no longer intended to contest its obligation to pay Campbell's bills attributable to the accident, and that it wished to settle the PIP Action.

13. Pursuant to R. 4:42-9(a)(6), such a settlement entitled respondent to an award of attorney's fees. See, e.g. Liberty Village Assoc. v. West American Insurance Co., 308 N.J. Super. 393, 406 (App. Div.), certif. denied, 154 N.J. 609 (1998).

14. In connection with the Campbell matter, a law clerk in respondent's office, Maria A. Turco, performed certain services which she set forth in a certification, misdesignated an 'Affidavit of Services,' dated July 13, 1996 (Exhibit 1).

15. In her certification, Turco set forth the date, description and time expended on legal services which she had rendered in connection with the Campbell matter.

16. In her certification, Turco stated that she had expended 36.9 hours on the file and that her usual billable rate was $90.00 per hour.

17. In executing the certification, she certified that the information contained therein was true and that if any of the said information was willfully false, she would be subject to punishment.

18. In or about September 1996, HCM having agreed to pay Campbell's bills at issue in the PIP action and to settle the PIP matter, counsel for HCM advised respondent that HCM required respondent to submit a certification of services before it would agree to pay attorney's fees pursuant to R. 4:42-9(a)(6).

19. Respondent took Turco's certification and had a second certification prepared for his own signature, based on Turco's certification, which was identical to Turco's certification, with the following exceptions:

    a.) Respondent lined out Turco's name and wrote in his own hand the initials 'TLS' in its place.

b.) Respondent lined out Turco's title of 'law clerk' and wrote in his own hand the words 'licensed attorney for the State of NJ and a partner.'

c.) On the second page of Turco's certification, respondent added in his own hand a 1.0 hour charge for a settlement conference.

d.) On the second page of Turco's certification, respondent lined out Turco's statement of her usual billable rate of $90.00 per hour and inserted in his own hand: 'I bill clients at the rate of $275/hr. I voluntarily reduced the billable rate to $225/hr.'

e.) On the second page of Turco's certification, respondent lined out Turco's total fee request of $3,321.00 and in his own hand substituted the figure, $8,427.50 (Exhibit 2).

19. [sic] Respondent executed the new Certification dated September 25, 1996, certifying to the truthfulness of the matters contained therein (Exhibit 3).

20. Respondent submitted his September 25, 1996 Certification to his adversary, Charles D. Krause, Esq., of Fishman and Callahan, P.C., which represented HCM in the PIP action.[1]

21. The Campbell case was settled on October 21, 1996 and the settlement was placed on the record before the Hon. Edmond M. Kirby, J.S.C.

22. On the record and in the presence of the Court, respondent stated:

'In addition to the payment of Dr. Turk's bill of $10,000.00 and in settlement of the other medical bills that Mr. Krause and I have agreed that H.C.M. will pay, there's also a payment of $7,000.00 as attorneys fee for the legal services that had been performed pursuant to rule 4:42-9(a)(6) which permits this court, in its discretion, to award an attorneys fee. There has been a settlement. I had

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[1] Respondent did not send to his adversary Turco's certification with his handwritten changes. He sent only the final certification with the typed changes, thereby giving the appearance that he, not Turco, had performed those tasks.

submitted a certification of legal services and we negotiated it and I'm accepting $7,000.00.' (Exhibit 4).

The remaining facts were gleaned from the testimony and documents offered at the ethics hearing. The OAE was investigating a grievance in which respondent's client, Keith Campbell, alleged that respondent had engaged in a conflict of interest. Although the conflict of interest allegation proved to be unfounded, in the course of his examination of respondent's file, Alan Beck, the OAE investigator, noticed the certification of services prepared by respondent's paralegal, Maria Turco, on which respondent had handwritten the changes detailed in the stipulation. The ensuing investigation led to the filing of a formal ethics complaint against respondent.

The ethics hearing focused on whether respondent's work on the file exceeded the number of hours contained in the certification of services, as respondent claimed. The record reveals that the following people in respondent's firm had worked on the file: (1) Maria Turco, law clerk, (2) Josie Flatly, secretary, (3) Robert Cary, partner, (4) Sheldon Bross, partner, (5) Fran (no last name identified), secretary, (6) Casey (no last name or position identified), (7) Gwendolyn Morgan, paralegal/claims adjuster, (8) Michelle (no last name or position identified) and (9) Vincent Russo, associate. The presenter maintained that these individuals had performed the tasks for which respondent sought payment in his certification of services. In particular, Maria Turco's certification recited that she had spent 36.9 hours organizing the medical bills and reports, preparing a comprehensive list of providers and

amounts due, verifying with the providers the outstanding balances and so forth. The record contains a compilation of medical bills, a calculation of all bills and a personal injury protection ("PIP") payment record. Turco prepared all of these documents.

Respondent did not dispute that others in his firm had performed services on the *Campbell* file. Indeed, he submitted with his post-hearing memorandum a summary of their time spent on the case:

• Gwendolyn Morgan, paralegal/claims adjuster	1.2 hours
• Vincent Russo, associate	0.2 hours
• Robert Cary, partner	0.6 hours
• Sheldon Bross, partner	0.2 hours
• Maria Turco, law clerk	36.9 hours
• Josie Flatly, secretary	not listed

Respondent pointed out that, while he was serving a suspension from the practice of law (from December 1994 through May 1995), other attorneys from his firm had assumed responsibility for the file.

Respondent also claimed in the summary that he had worked 33.4 hours at $275 per hour, for a fee of $9,460. He contended that the total bill for the firm's services was, thus, $12,919. Respondent added that, because he had reduced his hourly rate from $275 to $225, if the partners' time were billed at $225 per hour, the total fee would be $11,199. Respondent further maintained that he had performed many other services that were not included in the certification of services, such as preparation of the PIP complaint and a summary judgment motion. According to respondent, he was willing to forego a portion of his fee because he

had received a substantial fee when he settled Campbell's personal injury litigation and he was interested in obtaining a prompt resolution of the matter.

About one year before the September 25, 1996 settlement conference, respondent had drafted an August 24, 1995 letter to his adversary, purporting to enclose a certification of services in the amount of $4,000. Respondent testified that he never prepared this certification and never sent this letter. He asserted that, although he had spent more time on the file, $4,000 was a fair and reasonable fee for the services that had been rendered up to that point. Approximately one year later, respondent submitted the certification claiming that his fee was $8,527.50.

Respondent asserted that his adversary had insisted on receiving a certification of services immediately. Respondent testified that, after the September 25, 1996 settlement conference before the court, his adversary had stated, "I could wind this up immediately if you send me a Certification today." Respondent claimed that, because he almost invariably billed on a contingent fee basis, he had not kept time records of his services in the *Campbell* matter. Respondent testified as follows about the certification of services:

> Q. That Certification does not accurately describe your hours on those tasks, on those dates, does it?
>
> A. Does not.

Q. So at the end of the Affidavit where it says that you certify that it's true, that's incorrect, it's false? I mean, in fact, the Affidavit is a false documentation of your hours, is it not?

A. Yes. That's true.

Q. . . . You filed a false certification. Why did you do that?

A. I sent it. I didn't file it but I mailed it because I, I, I was, in my mind I was meeting a request from my adversary and was under-billing, there was no -- in my mind there was no deceit, there was no fraud, it was for so much less than what I could have billed at, I was just trying to close the case.

During cross-examination, respondent made the following admissions:

Q. When you made the handwritten changes to this Certification by Maria Turco did you understand that what you were doing was wrong?

A. Yes.

Q. When you submitted this Certification, the amended Certification under your name and with your signature to [respondent's adversary] did you understand that he was going to submit that to his client?

A. Or discuss it with the client on the phone, yes.

Q. And did you understand that the client was relying on it to some extent at least in making its decision to pay you $7,000 in counsel fees?

A. Yes.

Indeed, respondent's brief to the special master states that, "Respondent admits that the certification he signed was not accurate in that he had not personally performed each of the tasks as listed." Moreover, his brief to us stated that, "Respondent does not dispute, and has never disputed, that the certification he delivered to his adversary in the Campbell v.

HCM matter is false, as it indicates that he performed certain tasks on certain dates which he did not in fact perform."

Judge Kirby, the judge before whom the settlement was placed on the record, testified that respondent's certification of services had not been filed with the court and that he had not considered it in accepting the settlement of the PIP litigation. According to Judge Kirby, he had not independently assessed the reasonableness of respondent's fee.

* * *

The special master found that respondent's certification of services misrepresented the services that he had performed, in violation of *RPC* 8.4(c), and that respondent inflated the number of hours he had spent on the file with the intention that his adversary rely on the certification. The special master acknowledged that there were various services that respondent performed that did not appear on the certification, such as the preparation of the complaint, interrogatories, correspondence and the motion for summary judgment; receipt and review of his adversary's answer; preparation of the motion for summary judgment; and time spent on telephone conferences. On the other hand, the special master observed that several of the items on respondent's reconstructed certification appeared exaggerated, such as preparing a one-count PIP complaint, conferring with Maria Turco about unpaid bills,

drafting a deposition notice and *subpoena duces tecum*, drafting letters to the insurance company about unpaid bills and reviewing a workers' compensation decision about the reasonableness of a physician's fee. The special master considered that, although little work was performed after August 1995, when respondent had claimed a $4,000 fee, the final certification for $8,427.50 more than doubled the fee.

The special master dismissed the charged violations of *RPC* 3.3(a)(1) and (5), finding that the certification of services had not been submitted to Judge Kirby and that, according to Judge Kirby's testimony, he had not independently reviewed the reasonableness of the fee. The special master also dismissed the charged violation of *RPC* 8.4(a).

The special master recommended a one-year suspension.

* * *

Following a *de novo* review of the record, we are satisfied that the special master's finding that respondent committed ethics violations is supported by clear and convincing evidence. Respondent admitted that he submitted a false certification of services to his adversary with knowledge that the certification would be considered by the insurance company in determining whether to pay respondent's fee. He maintained, however, that, because the services performed had exceeded the amount listed, his misrepresentation was

not material. Respondent further argued that *RPC* 8.4(c) is not violated unless an attorney's misrepresentation amounts to fraud or deceit. Contending that the false certification of services did not contain a material misrepresentation, respondent asserted that the misrepresentation did not amount to fraud or deceit and, therefore, that he had not violated *RPC* 8.4(c).

We consider respondent's misrepresentation to be material. Respondent knew that his adversary's client would rely on the accuracy of the certification of services in determining whether to settle the PIP claim and whether to pay the attorneys' fee that respondent requested. Accordingly, the contents of the certification were material, as they affected the outcome of the matter. In addition, although not every misrepresentation necessarily amounts to a violation of *RPC* 8.4(c), a misrepresentation need not rise to the level of fraud or deceit to constitute unethical conduct. For example, in *In re Buckner*, 140 *N.J.* 613 (1995), the attorney had the oral authorization of his client to sign his client's name to a deed, which was then recorded. Although we found that the attorney "misrepresented to the world that [his client] had signed the deed," the misrepresentation was not necessarily material because the attorney had his client's permission to sign the deed. Significantly, the charge that the attorney violated *RPC* 4.1(a)(1) (false statement of a material fact) was dismissed. Nonetheless, the attorney was found to have violated *RPC* 8.4(c).

Moreover, in a long line of cases, attorneys who have taken improper jurats or signed the names of others, with their authorizations, have been found guilty of *RPC* 8.4(c) violations, despite the fact that they have not made material misrepresentations. In those cases, the attorneys misrepresented that they had witnessed the signatures of other parties, when they had not. Because, however, the parties had either signed the document, albeit not in the attorney's presence, or had authorized another to sign on their behalf, the misrepresentations were not material. *See In re Izzo*, 156 *N.J.* 375 (1999) (reprimand where attorney took the acknowledgment of the grantor to a deed outside the grantor's presence); *In re Brunson*, 155 *N.J.* 591 (1999) (reprimand for attorney who notarized a release in the absence of the person who signed it, and, in another matter, failed to act with diligence and to communicate with his client); *In re Robbins*, 121 *N.J.* 454 (1990) (reprimand where attorney signed a deed on behalf of the parties in interest, completed the acknowledgment, executed the jurat and submitted the deed to a planning board); *In re Conti*, 75 *N.J.* 114 (1977) (reprimand where, after attorney directed his secretary to sign his clients' names on a deed, he witnessed the signatures and took the acknowledgment).

Here, respondent represented Keith Campbell in a personal injury matter. After the insurance company stopped making PIP payments, respondent filed suit. Because most of respondent's cases were handled on a contingent fee basis, he did not keep records of the time spent on the PIP file. When respondent's adversary requested that he send a certification

of services immediately, respondent should have asked for more time to reconstruct his hours or, as the special master suggested, should have submitted a draft containing a rough estimate of his services, with a final certification to be supplied in the future. Instead, concerned about receiving his legal fees promptly, respondent intentionally submitted Turco's certification, with a few significant changes, as if it were his own. Respondent conceded that he knew that the certification was false and that he knew that his adversary would rely on it in determining whether to pay his fee. He chose to take the "shortcut" of modifying Turco's certification, rather than take the necessary time to prepare his own certification. Respondent's actions were motivated by greed and personal gain – he wanted his fee and he wanted it quickly.

With respect to whether respondent overstated or understated his fee when he submitted Turco's certification, the record does not contain clear and convincing evidence to support either position. The OAE submitted numerous documents showing that many others in respondent's law firm had worked on the *Campbell* file. In particular, the OAE noted that Maria Turco had prepared a comprehensive compilation of Campbell's medical bills, a calculation of all bills and a PIP log and that she had gathered photocopies of all bills. That evidence, however, fell short of proving that respondent had not performed the services, as he testified and as he alleged in his reconstructed certification. Although the special master ruled that respondent had the burden of going forward, it is a presenter's burden to prove by clear and convincing evidence that the allegations of the complaint are true. Once a

respondent asserts a defense to a charge, then the burden shifts to the respondent. *R.* 1:20-6(c)(2)(C). The presenter did not prove that respondent had inflated his bill when he submitted Turco's certification as his own.

Moreover, respondent's testimony about the amount of time that he and others in the law firm had spent on the file was not directly controverted. Respondent prepared an analysis of approximately sixty-five documents that he personally had reviewed or drafted in the *Campbell* matter and submitted a summary of his testimony regarding all of his firm's services. According to the summary, the total fee should have been $12,919 (or $11,199 if all partners' time were billed at $225 per hour). In addition, the fact that respondent prepared a certification for $4,000 about one year before submitting the $8,427.50 certification does not necessarily lead to a finding that the latter certification was inflated. Respondent never sent the $4,000 certification and had not reconstructed his time records before preparing it. Its evidential value was, therefore, limited.

In short, although respondent conceded that he submitted a false certification, there is no clear and convincing evidence that the certification overstated the amount of the fee to which respondent was entitled. His conduct may be characterized as deceitful, but not fraudulent or dishonest, in the sense that his motive was to obtain a higher fee.

The special master properly dismissed the remaining charges. The certification was not submitted to the court. Judge Kirby testified that he had not considered the certification or independently assessed the reasonableness of respondent's fee. Accordingly, respondent

did not make a false statement of material fact to a tribunal or fail to disclose a material fact to a tribunal. We, therefore, dismissed the charges of a violation of *RPC* 3.3(a)(1) and (5), as well as the charge of a violation of *RPC* 8.4(a).

The only issue is the quantum of discipline to be imposed. In their briefs filed in this proceeding, the OAE urged a two-year suspension, while respondent suggested either no discipline or, at most, a reprimand. As noted above, we found that respondent engaged in conduct involving deceit and misrepresentation. Attorneys who have acted with deceit generally have been subject to a wide range of discipline. *See In re Sunberg*, 156 *N.J.* 396 (1998) (reprimand where attorney placed a forged arbitration award in the client's file to mislead his partner into believing that an arbitration proceeding had taken place when the matter had been dismissed; attorney also failed to consult with client about the means to reach an objective and made false statements to disciplinary authorities); *In re Olitsky*, 149 *N.J.* 27 (1997) (attorney suspended for three months for intentionally placing funds in his trust account because the Internal Revenue Service had imposed a tax lien on his business account; Olitsky admitted that to avoid the levy he deposited his personal funds into his trust account.); *In re Teitelbaum*, 149 *N.J.* 27 (1997) (attorney suspended for three months for lying about payments due to his law partner's minor child; although Teitelbaum and his law partner had entered into an agreement requiring Teitelbaum to pay $150 per week to each of the partner's three children, Teitelbaum misrepresented to the mother of one of the children that the amount due was only $50 per week.); *In re Jenkins*, 151 *N.J.* 473 (1997)

(attorney suspended for six months for improperly obtaining a decedent's medical records by signing the decedent's name on a medical authorization form and presenting that form to a hospital; the attorney knew that the decedent had died more than one year earlier); *In re Haft*, 146 *N.J.* 489 (1996) (attorney suspended for one year after he signed a mortgage that was invalid without the signature of the attorney's wife, failed to disclose to the mortgagee (his client) two prior mortgages, failed to record the mortgage and failed to reveal its existence to a lender in a subsequent refinance of the two prior mortgages, resulting in a loss of more than $130,000 to the client; the attorney also engaged in a conflict-of-interest situation.); *In re Labendz*, 95 *N.J.* 273 (1984) (attorney suspended for one year for assisting his clients in submitting a fraudulent mortgage application by altering the contract submitted with the mortgage application to reflect an inflated contract price); *In re Weston*, 118 *N.J.* 477 (1990) (attorney suspended for two years for signing a deed and affidavit of title in the name of a client without authorization and subsequently lying to the purchaser's attorney about the documents' authenticity); *In re Lunn*, 118 *N.J.* 163 (1990) (three-year suspension where attorney submitted, in support of his own claim for personal injuries, a statement that he had written, represented that it was his deceased wife's statement and deliberately and repeatedly lied about the authenticity of the statement while under oath in a civil action pursued in his own behalf).

Here, respondent's misconduct was serious – much more so than, for example, the misrepresentation of the status of a matter to a client. Respondent knowingly and

intentionally submitted a false certification of services. By its own nature, a certification implies, and indeed requires, veracity. Respondent found it expedient simply to adopt another's certification as his own, rather than take the necessary time to prepare an accurate document. Moreover, respondent was motivated by monetary reasons – he wanted his fee paid promptly. Although respondent submitted as mitigation numerous "character letters," the consideration given to those documents is more than outweighed by respondent's prior disciplinary record. In particular, respondent was privately reprimanded in 1988 and was later suspended for six months, on December 1, 1994, for conduct involving deceit and misrepresentation, conduct prejudicial to the administration of justice and negligent misappropriation. Yet, respondent submitted a false certification about one and one-half years after he was reinstated. Obviously, respondent has not learned from his past mistakes. Under these circumstances, we unanimously voted to suspend respondent for three months.

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

Dated: 1/31/01

By: _____
LEE M. HYMERLING
Chair
Disciplinary Review Board

SUPREME COURT OF NEW JERSEY

DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Terry L. Shapiro
Docket No. DRB 00-127

Argued: July 20, 2000

Decided: January 31, 2001

Disposition: Three-month suspension

Members	Disbar	Three-month Suspension	Reprimand	Admonition	Dismiss	Disqualified	Did not Participate
Hymerling		X					
Peterson		X					
Boylan		X					
Brody		X					
Lolla		X					
Maudsley		X					
O'Shaughnessy		X					
Schwartz		X					
Wissinger		X					
Total:		9					

Robyn M. Hill 5/22/01

Robyn M. Hill
Chief Counsel