

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 10-245
District Docket No. XIV-09-092E

IN THE MATTER OF
ANTHONY L. VELASQUEZ
AN ATTORNEY AT LAW

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Decision

Argued: October 21, 2010

Decided: November 30, 2010

HoeChin Kim 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 was before us on a motion for final discipline filed by the Office of Attorney Ethics (OAE), based on respondent's guilty plea to one count of tampering with public records, in violation of RPC 8.4(b) (conduct that adversely reflects on an attorney's honesty, trustworthiness or fitness as a lawyer), RPC 8.4(c) (conduct involving dishonesty, fraud,

deceit or misrepresentation), and RPC 8.4(d) (conduct prejudicial to the administration of justice).

The OAE urged us to impose a reprimand. We agree that a reprimand is the appropriate measure of discipline.

Respondent was admitted to the New Jersey bar in 1998. He has no history of discipline.

In May 2009, the OAE moved for respondent's temporary suspension, based on his guilty plea to a "serious crime." R. 1:20-13(b)(2) defines a serious crime as:

. . . any crime of the first or second degree as defined by the New Jersey Code of Criminal Justice (N.J.S.A. 2C:1-1 et seq.) . . . a necessary element of which, as determined by the statutory or common law definition of such crime in the jurisdiction where the judgment was entered, involves interference with the administration of justice, false swearing, misrepresentation, fraud, deceit, bribery, extortion, misappropriation, theft; or any attempt or a conspiracy or solicitation of another to commit a 'serious crime;' or violations involving criminal drug offenses, excluding solely minor possession offenses.

In June 2009, the OAE withdrew their motion, after reviewing unspecified "information" received from respondent.

On February 6, 2008, a warrant for respondent's arrest was issued, based on a New Jersey State Police investigation that

revealed that, in 2004, respondent had stolen the identity of an individual named Alan Hollander by applying for a New Jersey driver's license in Hollander's name. The alleged theft was discovered when Hollander tried to renew his license and a photograph of respondent was in the Department of Motor Vehicles' (DMV) computer system. Hollander recognized respondent as a college fraternity brother but denied knowledge or approval of respondent's use of his identity. Respondent turned himself in to authorities on February 7, 2008.

By letter dated July 15, 2008 to the Deputy Attorney General (DAG) in charge of respondent's case, respondent's counsel requested that respondent be admitted to the Pre-Trial Intervention Program (PTI). Counsel acknowledged that respondent had submitted Hollander's documents to the DMV, but contended that he had done so with Hollander's permission. Moreover, counsel added, after applying to the DMV to obtain the license, respondent abandoned his attempt and never retrieved the license.

In his letter, counsel explained that, in the spring of 2004, respondent and his then-wife had just finalized the terms of their divorce. Respondent was suffering from depression and anxiety, for which he was being treated.

In his letter, counsel explained the unfolding of the events that led to respondent's guilty plea. While at a party in May 2004 with college fraternity brothers, the subject of respondent's divorce and depression came up. "While discussing the matters with his friends, someone stated that he wished he had a fake identification card so he could possibly date other women while his divorce was being finalized and could, among other things, possibly check into a hotel room using the false identification." Hollander suggested that respondent use his identifying documentation to obtain a false driver's license. Respondent agreed to the plan.

In May 2004, respondent went to the DMV and used documents that Hollander had provided to apply for a driver's license. While waiting for the license, respondent "realized that what he was doing was extremely stupid" and left the DMV without receiving the license.

According to counsel, in 2007, during the course of the police investigation, Hollander professed no knowledge of respondent's use of his identification. Hollander also stated that he had not seen respondent in the prior four or five years. As it turned out, that information was proven to be untrue. A mutual friend of Hollander and respondent was present when

Hollander and respondent were discussing the matter. In addition, another mutual friend stated that he, Hollander, and respondent were together at certain events approximately three times a year.¹

Despite counsel's request, respondent was not admitted into PTI. In September 2008, an indictment issued charging him with second degree use of personal identifying information, in violation of N.J.S.A. 2C:21-17.2, third degree tampering with public records or information, in violation of N.J.S.A. 2C:28-7a(2), and third degree forgery, in violation of N.J.S.A. 2C:21-1a. In January 2009, respondent pleaded guilty to tampering with public records.² The remaining two counts of the indictment were dismissed as part of the plea agreement.

¹ The statements of the two individuals are part of exhibit B to the OAE's brief.

² 2C:28-7(a)1-2 provides:

A person commits an offense if he:

(1) Knowingly makes a false entry in, or false alteration of, any record, document or thing belonging to, or received or kept by, the government for information or record, or required by law to be kept by others for information of the government;

(2) Makes, presents, offers for filing, or uses any record, document or thing knowing it to be false, and with purpose that it be taken as a genuine part of information or records referred to in paragraph (1).

By letter dated February 11, 2009, respondent advised the OAE of the criminal proceedings against him. On February 23, 2009, the Honorable Darlene J. Pereksta, J.S.C., sentenced respondent to a three-year term of probation, conditioned on his obtaining or maintaining employment. Respondent was also required to submit to random drug-testing, perform 200 hours of community service, and pay a \$5,000 fine.

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

Respondent pleaded guilty to one count of tampering with public records. The existence of a criminal conviction is conclusive evidence of respondent's guilt. R. 1:20-13(c)(1); In re Gipson, 103 N.J. 75, 77 (1986). Respondent's attempt to obtain a driver's license using another individual's identification documents, constituted a violation of RPC 8.4(b), RPC 8.4(c), and RPC 8.4(d). The sole issue to be determined is the quantum of discipline to be imposed. R. 1:20-13(c)(2); In re Lunetta, 118 N.J. 443, 445 (1989).

The level of discipline imposed in disciplinary matters based on the commission of a crime depends on a number of 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, supra, 118 N.J. at 445-46. Discipline is imposed even though an attorney's offense was not related to the practice of law. In re Kinnear, 105 N.J. 391, 395 (1987).

There are no disciplinary cases addressing an attorney's attempting and then abandoning a scheme such as respondent's. There are disciplinary cases in which attorneys presented another individual's driver's license during motor vehicle stops, an offense that merited a reprimand. See, e.g., In re Murphy, 188 N.J. 584 (2006) (attorney presented his brother's driver's license during two DUI stops to avoid prosecution; in mitigation, we took into account the attorney's struggle with alcoholism, his self-reporting his misconduct, and his admission of wrongdoing) and In re Gonzalez, 142 N.J. 482 (1995) (attorney presented his cousin's driver's license during a motor vehicle stop to avoid losing his own license). See also In re Poreda, 139 N.J. 435 (1994) (where an attorney presented an insurance identification card to a police officer during a court proceeding, indicating that his vehicle had been insured on the date that the officer had issued him a citation; the police officer later determined that Poreda's insurance card was not

valid. Poreda entered a guilty plea to forgery and/or possession of a forged insurance identification card; the misconduct was viewed as a serious, planned course of conduct but compelling mitigating circumstances justified only a three-month suspension).

Respondent's misconduct is more akin to the reprimand cases, Murphy and Gonzalez, than Poreda. Although respondent never even attempted to use the false identification, his conduct was more serious than Murphy's and Gonzalez' because he took the steps necessary to have the false license created, rather than "borrowing" an existing license belonging to a relative. In mitigation, respondent, like Murphy, has no history of discipline, self-reported his misconduct, admitted his wrongdoing, and was struggling with depression, as set forth in his counsel's July 15, 2008 letter to the DAG. We, therefore, determine to impose a reprimand for respondent's conduct.

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

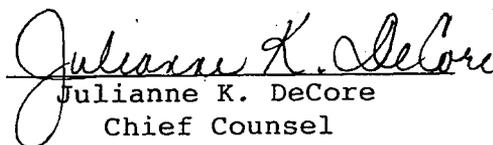
SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Anthony L. Velasquez
Docket No. DRB 10-245

Decided: November 30, 2010

Disposition: Reprimand

Members	Disbar	Censure	Reprimand	Dismiss	Disqualified	Did not participate
Pashman			X			
Frost			X			
Baugh			X			
Clark			X			
Doremus			X			
Stanton			X			
Wissinger			X			
Yamner			X			
Zmirich			X			
Total:			9			


Julianne K. DeCore
Chief Counsel