

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 97-402

IN THE MATTER OF
MEREDITH P. SOLVIBILE,
AN ATTORNEY AT LAW

:
:
:
:
:
:
:
:
:
:

Decision

Argued: December 18, 1997
Decided: June 28, 1998

Nitza I. Blasini appeared on behalf of the Office of Attorney Ethics.
Robert N. Agre appeared on behalf of respondent.

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

This matter was before the Board based on a recommendation for discipline by the District VII Ethics Committee ("DEC"). The complaint charged respondent with a violation of RPC 8.4(c)(conduct involving dishonesty, fraud, deceit or misrepresentation) for misstatements made in connection with her application to the Pennsylvania bar examination.

Respondent was admitted to the New Jersey bar in 1995. Respondent has no history of discipline.

Respondent admitted the allegations in the complaint, but requested a hearing on the issue of mitigation. The facts are as follows:

Respondent simultaneously took the New Jersey and Pennsylvania bar examinations. Although she passed in New Jersey, she failed in Pennsylvania. Thereafter, she again took and failed the Pennsylvania examination. For a third time, respondent applied to take the February 1996 Pennsylvania bar examination. By letter dated December 7, 1995 the Assistant Executive Director for the Pennsylvania Board of Law Examiners (PBLE) returned respondent's application and certified money order in the amount of \$420 stating that the application had been received after the filing deadline. Respondent contacted the PBLE on December 11, 1995 and was told that her money order and the postmark on the application were dated December 4, 1995, beyond the filing deadline. Respondent informed the Assistant Executive Director that the money order was misdated and that the "Pitney Bowes postage meter mark" showed a date of November 24, 1995. The Assistant Executive Director suggested that, if respondent could obtain a letter from the manager of the United States Postal Service office about a mistake in the recorded purchase date of the money order, her application would be processed. In fact, respondent had purchased the money order on December 4, 1995, not November 24, 1995. Nevertheless, respondent's boyfriend obtained the assistance of a friend who worked at the post office. Respondent prepared a letter on United States Postal Service letterhead obtained by the friend, stating as follows:

To Whom It May Concern:

Apparently there was a mistake in the dating of our money orders. The date on money order number 190030 was inadvertently stamped 12-4-95 when it should have been properly stamped 11-24-95, the date when it was purchased.

The letter was signed by Joseph Falcone, "Window Clerk Supervisor," the friend of respondent's boyfriend.

Respondent took and passed the February 1996 Pennsylvania bar examination. During the course of the PBLE investigation of respondent's fitness and character to be admitted to the Pennsylvania bar, the PBLE learned that respondent had misrepresented the date of the money order. In a letter from the postmaster of the Ardmore branch, the PBLE learned that the letter written by Joseph Falcone on December 11, 1995 was written on "unofficial" United States Postal Service stationery, that Joseph Falcone was employed at a neighboring postal facility in Narberth, Pennsylvania and that Falcone did not in any way represent the Ardmore post office branch. As a result of Falcone's involvement in the deception, the Ardmore postmaster reported the incident to the Narberth postmaster.

Following the investigation, by letter dated April 26, 1996, the PBLE told respondent that circumstances surrounding her bar application and subsequent statements that she made about those circumstances conflicted with information obtained during the PBLE's character and fitness investigation. The PBLE informed respondent that such circumstances brought into question her character to become a member of the Pennsylvania bar. The letter stated

that, pending the resolution of the matter, either respondent's test results could be withheld or her bar admission postponed. The letter also gave respondent the right to request a hearing before the PBLE.

Respondent requested a hearing before the PBLE, which was conducted on June 10, 1996. At that time, respondent admitted her actions and explained why she had tried to deceive the PBLE. She also presented character witnesses in her behalf.

After the hearing, the PBLE notified respondent of its determination that respondent did not meet the requirements for admission to the bar, even though she had passed the examination. Respondent was given the alternative of seeking judicial review of the PBLE's determination or submitting a request for reconsideration of its decision, "no less than one year from the date" of their letter.

By letter dated June 26, 1996 respondent wrote to the Office of Attorney Ethics ("OAE") disclosing the circumstances of the misrepresentations she had made in connection with her application for the Pennsylvania bar examination. Respondent also informed the OAE that the PBLE had determined that the results of her bar examination would stand for one year and that she could reapply for admission within that time period.

The OAE filed a formal ethics complaint against respondent. At the DEC hearing, respondent explained the circumstances surrounding her inability to meet the application deadline. She testified that, although she believed that her parents were giving her the money to pay for the examination fee, she learned just before the application deadline that her

parents would not pay the fee. On the last day the application could be postmarked, respondent attempted to withdraw the money from her own account, but was unable to withdraw the full amount. She testified that she withdrew half of it on Friday and the remainder the next day. The following Monday she went to the post office to purchase the money order and mailed the application on the next business day.

Respondent testified that, when she learned that her application had been denied because of the missed deadline, she was extremely upset; she had really wanted to take the exam and "panicked." She, therefore, obtained the letter from the postal employee stating that the money order had been incorrectly stamped.

Respondent accepted full responsibility for her actions, admitted her wrongdoing to the PBLE and also notified the New Jersey disciplinary authorities about her impropriety. She claimed that she was remorseful and recognized that her actions were improper. Respondent stated that she had always wanted people to think of her as an honest person and that the entire incident had been a very "humbling experience." She explained that her application had been prepared well in advance of the deadline, but that she was waiting to obtain the money for the filing fee. Respondent testified that she was required to notify individuals of her wrongdoing and that she was not at all proud of her actions. As to Joseph Falcone, respondent related that he had been reprimanded by his employer, but not fired. Respondent wrote a letter to him apologizing for the incident.

Respondent testified that she sought legal employment in New Jersey between February 1995 and February 1996. She was unable to find a job. Thereafter, she stopped looking for legal employment because she felt it would be unfair to accept a position without knowing whether she would be permitted to practice law.

At the DEC hearing, respondent indicated that the time to petition for admission to the Pennsylvania bar had tolled the day before. She also indicated that, according to her attorney, the PBLE would allow her bar examination results to stand and it was likely that she would be admitted to the bar after waiting a year.

Respondent stated that following the denial of her admission to the Pennsylvania bar she continued to take courses offered by the New Jersey Institute for Continuing Legal Education ("ICLE") and was working for a non-profit organization. She testified that her long-range goals were to obtain a position with a law firm in the field of either real estate, estate planning or commercial law.

Respondent admitted knowing at the time that her conduct was wrong. She explained, however, that her judgment was "clouded" and that she was desperate. She claimed that, although at the time she trivialized her action, she now recognizes its seriousness.

The DEC noted that during the Pennsylvania proceedings, respondent's parents were present and that the PBLE examiner was acquainted with respondent's father, a Pennsylvania attorney in good standing. The DEC believed that the examiner should have recused himself

from participating in the proceedings.¹ The DEC also found that the PBLE examiner failed to fully question respondent about her subornation of perjury of a third person, Falcone.

The DEC was not impressed with the character witnesses respondent presented at the PBLE hearing, who included individuals who had known her and her family for a number of years, rather than persons with whom respondent had had professional contact. The DEC found no mitigation other than the testimony that respondent had had “a lapse in judgment” and that the incident was a “once in a lifetime episode, just an aberration.”

The DEC did not give great weight to the documentary evidence submitted in mitigation, which included ICLE certifications for second and third year for the New Jersey Skills and Methods requirements, letters from two attorneys and the letters presented at the PBLE hearing. The DEC found that respondent’s testimony lacked credibility and “true remorse.” Moreover, the DEC noted that respondent did not seem particularly concerned about having asked a third person to lie for her and about the consequences – a reprimand – suffered by that party. The DEC further noted that, although respondent testified that she had been moved by desperation and stress, she had not sought counseling or treatment of any kind to cope with the stress. The DEC was not convinced that respondent had demonstrated that she could endure the stress inherent in the practice of law. The DEC observed that the areas of law favored by respondent are fraught with deadlines and compound pressures and that she might again panic when faced with critical deadlines.

¹ The PBLE imposed a significant sanction on respondent, despite the examiner’s familiarity with respondent’s father.

The DEC found that respondent's conduct violated RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation) and subornation of perjury of a postal employee for her own benefit. Because of the involvement of a third party, the DEC believed that respondent's conduct merited a two-year suspension.

* * *

Upon a de novo review of the record, the Board is satisfied that the DEC's finding of unethical conduct is clearly and convincingly supported by the record. The Board, however, disagrees with the discipline recommended by the DEC, finding that it is more harsh than warranted by precedent.

Respondent has admitted that she made a mistake. Moreover, she made these admissions to the PBLE and, after she was denied admission to the Pennsylvania bar, reported the incident to the OAE. Respondent's conduct was undeniably improper. Was it merely lack of judgment by a young, inexperienced attorney or was the conduct as evil as viewed by the DEC? The DEC properly found that respondent's misconduct was compounded by her involvement of a third person. However, it characterized respondent's conduct in this regard as subornation of perjury. The *Black's Law Dictionary* definition of the term is "procuring another to take such a false oath as would constitute perjury in the principal." Oath is defined as "any form of attestation by which a person signifies that he is

bound in conscience to perform an act faithfully and truthfully.” The letter that was drafted by respondent, and signed by Joseph Falcone, albeit untruthful, was not an oath, a certification or an affidavit. In addition, it was not made on the application itself. Still, respondent acted improperly. She did make a misrepresentation on which the Pennsylvania bar authorities relied. Nevertheless, the evidence supports the conclusion that respondent’s conduct was more the product of poor judgment and inexperience than malice or deficiency of character. Respondent was twenty-six at the time, having recently graduated from law school. The evidence establishes that respondent truly learned from her mistakes and that she was sincere in her avowed intention to abide by the standards of the profession.

The OAE suggests that a short-term suspension is warranted, considering both the mitigation presented, including respondent’s youth and inexperience, and the aggravating factor of her involvement of another party. In support of its position, the OAE relied on In re Poreda, 139 N.J. 435 (1995) (three-month suspension after the attorney fabricated and submitted to a police officer and the court a motor vehicle insurance card in defense of driving without insurance); In re Schleimer, 78 N.J. 317 (1978) (one-year suspension for knowingly making a false statement in a deposition in a civil matter in which the attorney was the plaintiff) and In re McNally, 81 N.J. 304 (1979) (two-year suspension for forging the name of the sheriff on a deed of foreclosure and witnessing the forged instrument which the attorney later recorded). These cases are not on point, however.

More analogous are cases in which attorneys lied in connection with their bar admission applications. In In re Guilday, 134 N.J. 219 (1993) a six-month suspension was imposed where the attorney was involved in a pattern of deception by failing to disclose his arrest in his applications to the bar in three jurisdictions. In In re Gouiran, 130 N.J. 96 (1992), the Court revoked an attorney's license to practice law when he knowingly failed to respond fully to questions on his application for admission to the New Jersey bar with respect to the revocation of his license as a realtor in New York.

Despite respondent's remorse she, nevertheless, engaged in conduct which brings into question her integrity and honesty. Thus, a five member majority voted to impose a six-month suspension, finding respondent's conduct as serious as that of Guilday. One member voted to impose a three-month suspension and one voted for a reprimand. Two members did not participate.

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

Dated: _____

6/28/98

By: _____



LEE M. HYMERLING
Chair