SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 99-422

IN THE MATTER OF

PHILIP L. KANTOR

AN ATTORNEY AT LAW

Decision

Argued: February 3, 2000

Decided: April 12, 2000

Ann C. Pearl appeared on behalf of the District IV Ethics Committee.

Anthony J. Zarillo, Jr. 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 on a recommendation for discipline filed by the District IV Ethics Committee ("DEC"). The formal complaint charged respondent with violations of *RPC* 3.3(a)(1) (making a false statement of material fact or law to a tribunal), *RPC* 3.3(a)(4) (offering evidence that the lawyer knows to be false) and *RPC* 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation).

Respondent was admitted to the New Jersey bar in 1990. He has no disciplinary history.

On July 18, 1997 respondent's then-fiancée, Amanda Groff, drove his Oldsmobile to Rainey's garage, a local mechanic, for new tires and an oil change. After test-driving the car, the mechanic, William Rainey, Jr., returned to his garage, where he collided with a vehicle driven by Thomas Fleming. Respondent refused to provide Fleming with any information about his automobile insurance, asserting that Rainey's insurance carrier had primary coverage and expressing concern that, if Fleming filed a claim against him, respondent's automobile insurance rates would be increased. Fleming filed a summons in Elk Township Municipal Court, charging respondent with failure to maintain automobile insurance, a violation of *N.J.S.A.* 39:6B-2.

At the municipal court hearing, respondent testified that, at the time of the accident, his automobile was insured. He also provided the court with a copy of an insurance card. As it turned out, respondent's automobile insurance policy had lapsed at the time of the accident. The Elk Township municipal court judge contacted the ethics authorities, contending that, during the municipal court trial, respondent lied when he testified that he had automobile insurance at the time of the accident. The question is whether respondent was aware that those representations were false when he made them.

According to the judge, respondent testified that his vehicle was insured by Allstate Insurance Company ("Allstate") at the time of the accident. Although the judge found respondent guilty, he advised him on the record that the finding of guilty would be vacated if respondent produced proof of insurance (a valid current insurance policy or insurance card) by 4:00 P.M. the next day. The following day, the judge received a telephone call from the court administrator, who informed him that respondent's insurance card had been delivered. The judge could not recall if respondent had delivered the card himself. After reviewing the copy of the insurance card that the court administrator had "faxed" to him, the judge determined that the insurance card had expired before the date of the accident. As a result, he did not vacate his decision.

The transcript of the September 9, 1997 municipal court trial contains the following exchange:

The Court:	Did you have insurance on the vehicle you own?
Mr. Kantor:	That's correct judge. . . .
Prosecutor:	Was [your vehicle] insured that day?
Mr. Kantor:	Yes.
Prosecutor:	And who was your carrier on that day?
Mr. Kantor:	Ah, this is exactly, this is the crux of the whole matter Judge. This is the information that I shouldn't be compelled to give.
The Court:	. . . [t]he objection is overruled.
Mr. Kantor:	It would of [sic] been insured by Allstate at the time.
Prosecutor:	And the policy number?
Mr. Kantor:	I don't know.
Prosecutor:	Do you have a card indicating that it was so insured on that date?
Mr. Kantor:	Yes.

Prosecutor: Is it with you? In whose name is it insured?
Mr. Kantor: Mine. . . . It's an old card, it's an old policy, they took a card out of the glove compartment that was not the current card.
Prosecutor: Okay so you're saying that on that date that vehicle was insured with Allstate?
Mr. Kantor: Yes.

Amanda Groff testified at the DEC hearing that she and respondent had been living together for five or six years and that in 1997 she had been responsible for paying the household bills. She stated that she had received an automobile insurance billing statement from Allstate with a March 13, 1997 due date. According to Groff, she wrote a check for the insurance premium, marked the statement "paid" and, because she did not have any postage stamps at home, she took the envelope to her office and placed it on her desk. Groff had chosen the option offered by Allstate of paying the insurance bill in installments. The insurance policy period was from March 13, 1997 to September 13, 1997. The statement contained the following notice: "This bill reflects your renewal offer premium. Your coverage won't continue unless we receive the Minimum Amount Due before 12:01 a.m. Standard Time on March 13, 1997."

Groff stated that she never saw the March 13, 1997 insurance bill or the check again. She did not recall if she ever mailed the payment to Allstate or if she received the canceled check for the insurance payment. Groff claimed that, although she searched for the check register in which she noted the payment of the Allstate bill, she could not find it. Groff added that she never made any additional payments to Allstate because she did not receive any

further invoices. She contended that, because the months of April through July were the busiest for her family's landscape business in which she was employed, she had not noticed the absence of monthly statements from Allstate.

Groff related that, after the July 18, 1997 accident, she told respondent, in answer to his inquiry, that there was insurance covering the Oldsmobile and gave him a current insurance card. Groff denied having received a notice of cancellation of the automobile insurance policy.

For his part, respondent stated that Rainey had assured him that Rainey's insurance would cover the damages. After respondent received the municipal court summons filed by Fleming, he went to Rainey's garage, at which time Rainey showed him a provision in his insurance policy for primary coverage, whether or not there was any other insurance coverage. After receiving the summons, respondent also asked Groff about their auto insurance. According to respondent, Groff assured him that they had insurance, showed him the invoice marked "paid" and gave him a current insurance card.

Respondent, thus, maintained that he believed that his vehicle was insured at the time of the accident when he made that representation to the judge. Respondent further contended that he was certain that the summons against him would be dismissed because (1) Rainey had primary insurance; (2) the vehicle was operated on private property (Rainey's garage) at the time of the accident; and (3) he did not believe that he had "caused" the vehicle to be

operated, as required by the statute. Respondent asserted that, due to his certainty of the dismissal of the summons, he had not brought his insurance information to the municipal court trial. After the judge found him guilty, respondent presented to the court clerk a copy of both the insurance card that had expired on March 13, 1997, as well as the current insurance card showing that the vehicle was insured at the time of the accident. Although respondent had a copy of the expired insurance card at the DEC hearing, he was not able to produce a copy of the current insurance card. Respondent insisted that, although he did not have a copy of the current insurance card, he must have presented it to the court clerk because obviously the submission of an expired insurance card would have been insufficient to have the guilty finding vacated.

Like Groff, respondent denied receipt of a notice of cancellation of the insurance policy. Respondent conceded that, in early August 1997 (before the municipal court trial), he received a July 31, 1997 letter from Allstate, notifying him that it was reserving its right to disclaim any obligation for the July 18, 1997 accident because respondent's policy had been canceled on March 13, 1997 for failure to pay the policy premium. Respondent testified that he chose not to contact Allstate in response to this letter, believing that it had been sent in error because "they have records indicating that we failed to pay the policy. I have records that show that we paid the policy. I wasn't concerned."

As noted earlier, respondent denied having received a notice of cancellation of the insurance policy before the September 9, 1997 municipal court trial. He claimed that he later received an October 9, 1997 letter canceling the policy as of March 13, 1997. In that letter, however, Allstate did not cancel the insurance policy. Instead, as suggested in its July 31, 1997 letter, Allstate informed respondent that, because the policy had already been canceled on March 13, 1997 for non-payment of premium, Allstate disclaimed any liability for the July 18, 1997 accident.

At the conclusion of respondent's testimony, OAE investigator Janette Garcia testified in rebuttal that, on April 16, 1998, respondent informed her that, several weeks earlier, Groff had found the Allstate insurance bill and the insurance premium check in an envelope in her desk at work. According to Garcia, although she requested a copy of the check in an April 16, 1998 letter to respondent, he never produced it.

* * *

The DEC found that, when respondent testified in municipal court that his insurance policy was in effect, he knew that his automobile insurance policy had been canceled. Concluding that respondent violated *RPC* 3.3(a)(1), *RPC* 3.3(a)(4) and *RPC* 8.4(c), the DEC recommended a reprimand.

* * *

Following a *de novo* review of the record, we are satisfied by clear and convincing evidence that respondent committed ethics violations. On September 9, 1997 respondent unequivocally represented to the municipal court judge that he had insurance covering his Oldsmobile as of the date of the July 18, 1997 accident. There is no question that that representation was false. Although respondent claims that he believed his representation was true, there is evidence to the contrary.

According to the record, in March 1997 Groff issued a check to Allstate and placed the envelope containing the check and invoice in her desk at work. She claimed that she failed to notice the absence of Allstate bills in subsequent months or the absence of the canceled check from Allstate. Groff, thus, allegedly believed that they had automobile insurance. When respondent asked her about insurance, after receiving the summons from Fleming, Groff assured him that there was insurance, showing him the March 1997 invoice marked "paid" and the then-current insurance card. Up to this point, there is no reason for us to dispute this version of the events. However, in early August, respondent received a July 31, 1997 letter from Allstate informing him that, because his insurance policy had been

canceled on March 13, 1997 for non-payment of the premium, Allstate was reserving its right to disclaim any liability for the July 18, 1997 accident. The receipt of this letter should have prompted respondent to contact Allstate about insurance coverage. According to respondent's testimony at the DEC hearing, however, although Allstate's records showed that the policy had been canceled, his records showed otherwise; therefore, he claimed, he was not concerned. This alleged lack of concern was unreasonable under the circumstances. At a minimum, respondent should have contacted Allstate to clarify what he believed was a mistake, not only for any potential claim filed by Fleming, but to satisfy himself that he was in compliance with the compulsory liability insurance laws. Moreover, respondent's testimony to the judge was unqualified; he made no mention of the fact that, according to Allstate, he did not have insurance at the time of the accident. Furthermore, respondent never contacted the judge after the hearing to correct his testimony. Respondent's failure to at least mention to the judge the dispute over insurance coverage and to correct the misrepresentations that he made at the municipal court hearing belies the *bona fides* of his testimony.

We, thus, find that respondent made misrepresentations about his insurance coverage to the judge, in violation of *RPC* 3.3(a)(1) and (4) and *RPC* 8.4(c).

The discipline imposed for conduct similar to respondent's has ranged from an admonition to a suspension. *See, e.g. In re Lewis,* 138 *N.J.* 33 (1994) (admonition for

attorney who, during a municipal court hearing on heating system violations on rental property he owned, presented as evidence a heating system bill with a date altered so as to create the appearance that the violation had been cured before the summons had been issued. In mitigation, we took into account that the court had not been deceived and that no injuries resulted from the attorney's actions); *In re Mazeau*, 122 *N.J.* 244 (1991) (attorney reprimanded for failing to disclose to a court his representation of client in a prior lawsuit, where that representation would have been a factor in the court's ruling on the attorney's motion to file a late notice of tort claim); *In re Marlowe*, 121 *N.J.* 236 (1990) (attorney reprimanded for falsely representing to the court that all counsel consented to an adjournment of the matter); *In re Chasan*,154 *N.J.* 8 (1998) (three-month suspension for attorney who distributed a fee to himself after representing that he would maintain the fee in his trust account pending a dispute with another attorney over the division of the fee and then misled the court into believing that he retained the fee in his trust account; attorney misled his adversary also, failed to retain fees in a separate account and violated recordkeeping requirements); *In re Chulak*, 152 *N.J.* 553 (1998) (three-month suspension for attorney who allowed a nonattorney to prepare and sign pleadings in the attorney's name, permitted the nonattorney to be designated as "Esq." on his attorney business account and then

misrepresented to the court his knowledge of these facts; attorney also assisted in the unauthorized practice of law).

At oral argument before us, both the presenter and respondent suggested that a reprimand would be the appropriate discipline in this matter. We agree that a reprimand sufficiently addresses the nature of respondent's conduct. We, therefore, unanimously voted for a reprimand. Three members did not participate.

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

Dated: 4/12/00

By: _____
LEE M. HYMERLING
Chair
Disciplinary Review Board

SUPREME COURT OF NEW JERSEY

DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Philip L. Kantor
Docket No. DRB 99-422

Argued: February 3, 2000

Decided: April 12, 2000

Disposition: Reprimand

Members	Disbar	Suspension	Reprimand	Admonition	Dismiss	Disqualified	Did not Participate
Hymerling			x				
Boylan			x				
Brody			x				
Lolla							x
Maudsley							x
Peterson			x				
Schwartz							x
Wissinger			x				
Total:			5				3

Robyn M. Hill 4/25/00
Robyn M. Hill
Chief Counsel