SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 08-178
District Docket No. XIV-08-004E

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| IN THE MATTER OF | |
| WALTER RYAN DOGAN | |
| AN ATTORNEY AT LAW | |

Decision

Argued: September 18, 2008

Decided: October 29, 2008

Janice Richter appeared on behalf of the Office of Attorney Ethics.

Eduardo Cruz-Lopez appeared on behalf of respondent.

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

This matter came before us on a motion for reciprocal discipline filed by the Office of Attorney Ethics (OAE), following respondent's disbarment in Georgia for violating rules comparable to New Jersey RPC 3.3(a)(4) (knowingly offering evidence that the lawyer knows to be false), RPC

3.4(a) (unlawfully obstructing another party's access to evidence or unlawfully altering a document having potential evidentiary value), RPC 3.5(c) (conduct intended to disrupt a tribunal), 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 recommends a two or three-year suspension. We determine that a six-month suspension is the proper discipline for respondent's misconduct.

Respondent was admitted to the New Jersey bar in 1984 and to the Georgia bar in 1992. He resides in Jamaica, New York, and has no history of discipline in New Jersey.

Respondent was employed as a food director at a long-term care facility and was not practicing law at the time of the child support proceedings that gave rise to the ethics charges against him. In June 2005, the Georgia Department of Human Resources, Office of Child Support Services (DHR), filed a long-arm petition against him for paternity and child support. In connection with the petition, DHR served respondent with a request for the production of documents, including "'paycheck stubs and other evidence of income' for two years."

Respondent admitted paternity and provided the DHR attorney with check stubs that appeared to be from his employer, showing that his gross earnings per week were $528. DHR, however, had also subpoenaed payroll records from respondent's employer. Those records showed that respondent actually grossed $1,000 per week. The discrepancy was discovered during a hearing on DHR's petition for child support payments. Respondent had fabricated the paycheck stubs by altering the figures on his paycheck stubs.

Following a bench trial on the DHR's petition, the judge for the Georgia Mountain Judicial Circuit noted as follows:

> Aside from the issue of support, what is so troubling to me is . . . [respondent's] conduct in submitting [these] documents. He fabricated a series of documents in an effort to convince the Court that his earnings were about half of what they actually were. . . . I'm inclined to find [respondent] in . . . criminal contempt of Court because he's disrupted the Court process by submitting these obviously false documents.
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> [Ex.B2-3.]

Although respondent denied that he was attempting to deceive the court, the court found him in "direct criminal contempt of court," sentenced him to twenty days in jail, and

referred the case to the Georgia bar. Respondent appealed his conviction for criminal contempt.

On April 14, 2006, the Georgia Court of Appeals affirmed the conviction, finding that respondent had represented to the DHR that the documents "submitted in response to a request to produce were pay stubs:"

> [a]t the time he did so, [respondent] understood that the information was being requested in connection with a hearing on his child support obligations. In other words, [respondent] falsified documents, which he knew or had reason to suspect would be presented to the trial court. Clearly, this type of conduct interferes with the court's authority to administer justice, such that the court was justified in holding [respondent] in contempt.[1]
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> [Ex.B4-B5.]

On May 11, 2007, the State Bar of Georgia filed an ethics complaint against respondent, charging him with violating Rule 3.3(a)(4) (knowingly offering evidence that the lawyer knows to be false), Rule 3.4 (unlawfully obstructing another party's access to evidence or unlawfully altering a document or other

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[1] In his brief to the Court of Appeals, respondent argued, unsuccessfully, that he had "never asserted to the court that the documents accurately reflected the wages paid to him but they reflected what his pay would be if a plan to reduce costs at his place of employment were implemented."

material having potential evidentiary value), Rule 3.5(c) (engaging in conduct intended to disrupt a tribunal), and Rule 8.4(a)(4) (engaging in professional conduct involving dishonesty, deceit or misrepresentation).

Respondent acknowledged service of the formal complaint on May 25, 2007, but failed to file an answer. The Georgia State Bar filed a motion for findings of fact and conclusions of law by default, seeking to have the allegations admitted under Georgia Bar Rule 4-212(a). On July 20, 2007, the special master granted the motion. On July 27, 2007, the special master issued an order finding respondent in default, deeming the allegations and violations charged in the complaint admitted, and recommending respondent's disbarment in Georgia.

On October 29, 2007, the Supreme Court of Georgia concurred with the special master's recommendation for disbarment. It concluded that disbarment was the appropriate sanction "where a lawyer, with the intent to deceive and to harm another party, falsifies documents and relies upon those documents in a court proceeding."

The OAE argued that a "two-to-three-year suspension" is appropriate under New Jersey precedent. Respondent's counsel's letter brief to us "accepted" the procedural history

and statement of facts outlined in the OAE's brief and appendix. Counsel argued, however, that a two-to-three year suspension would "amount to a severe sanction and grievous loss, on top of what already . . . has been imposed." Counsel noted respondent's admission that he "acted in contravention of the ethical mandates that insist upon the highest moral character from those privileged to be members of the bar and that there has been an aberrational neglect of his responsibilities as an attorney." Although respondent, through counsel, recognized that a period of suspension might be warranted, he asserted that he "is willing to take steps in his practice to avoid future problems" and that, in light of his unblemished record of almost two decades, he does not fall within "the end of the spectrum of that misconduct that warrants a two-to-three year suspension." Counsel suggested that respondent continue "on the inactive list for the next two years as opposed to a two-to-three year suspension" and that, upon reinstatement, he be "supervised by a senior member of the bar in good standing."

Following a de novo review of the record, we determine 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 on which we rest for purposes of disciplinary proceedings. Therefore, we adopt the findings of the Georgia Supreme Court and find that respondent violated RPC 3.3(a)(4), RPC 3.4(a), RPC 8.4(c), and RPC 8.4(d) by altering his pay stubs in connection with his child support proceedings to convince the court that his earnings were substantially less than they were. Although the OAE also asserts that respondent violated RPC 3.5(c) (engaging in conduct intended to disrupt a tribunal), this rule typically applies to attorneys who behave disrespectfully, discourteously or make disparaging remarks. See, e.g. In re Hall, 170 N.J. 400 (2002) (three-year suspension for numerous acts of misconduct, including egregious courtroom demeanor by repeatedly interrupting others and becoming unduly argumentative and abusive, a violation of RPC 3.5(c)) and In re Shearing, 166 N.J. 558 (2001) (attorney suspended for one year for, among other improprieties, making inappropriate and offensive statements about the trial judge). We, therefore, do not find a violation of RPC 3.5(c).

Reciprocal disciplinary proceedings in New Jersey are governed by R. 1:20-14(a)(4), which provides:

> The 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:
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> (A) the disciplinary or disability order of the foreign jurisdiction was not entered;
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> (B) the disciplinary or disability order of the foreign jurisdiction does not apply to the respondent;
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> (C) the disciplinary or disability order of the foreign jurisdiction does not remain in full force and effect as the result of appellate proceedings;
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> (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 unethical conduct established warrants substantially different discipline.

A review of the record does not reveal any conditions that fall within the scope of subparagraphs (A) through (D). The OAE properly concluded, however, that subparagraph (E) applies. New Jersey precedent does not support disbarment for respondent's misconduct.

Generally, in matters involving misrepresentations to a tribunal, the discipline ranges from an admonition to a term of suspension. See, e.g., In re Lewis, 138 N.J. 33 (1994)

(admonition for attempting to deceive a court by introducing into evidence a document falsely showing that a heating problem in an apartment of which the attorney was the owner/landlord had been corrected prior to the issuance of a summons); In re Whitmore, 117 N.J. 472 (1990) (reprimand for municipal prosecutor who failed to disclose to the court that a police officer whose testimony was crucial to the prosecution of a DWI charge had intentionally left the courtroom before the case was called, resulting in the dismissal of the charge); In re Paul, 167 N.J. 6 (2001) (three-month suspension for attorney who made misrepresentations to his adversary, in a deposition, and in several certifications to a court, thereby violating RPC 3.3(a), RPC 8.4(c) and (d)); In re D'Arienzo, 157 N.J. 32 (1999) (three-month suspension for attorney who made a series of misrepresentations to a municipal court judge to explain his repeated tardiness and failure to appear at hearings; mitigating factors militated against harsher discipline); In re Poreda, 139 N.J. 435 (1995) (three-month suspension for attorney who presented a forged insurance identification card to a police officer and also to a court); In re Kernan, 118 N.J. 361 (1990) (three-month suspension for attorney who in

his own divorce matter, submitted to the court a case information statement with a list of his assets and then, one day before the hearing, transferred an asset to his mother for no consideration, an 11.5 acre unimproved lot listed on the case information statement; the attorney's intent was to exclude the asset from marital property subject to equitable distribution; the attorney did not disclose the conveyance at the settlement conference held immediately prior to the hearing and did so only when directly questioned by the court at the hearing; the attorney also failed to amend the certification of his assets to disclose the transfer of the ownership of the lot; prior private reprimand); In re Lawrence, 185 N.J. 272 (2005 (six-month suspension for attorney who concealed his assets in his own divorce and bankruptcy proceedings, thereby making misrepresentations to two courts, a mortgage company and his wife; prior private reprimand); In re Forrest, 158 N.J. 429 (1999) (six-month suspension for attorney who, in order to obtain a personal injury settlement, did not disclose to his adversary, an arbitrator, and the court that his client had died); In re Telson, 138 N.J. 47 (1994) (six-month suspension for attorney who "whited-out" a section of a court document to conceal the

fact that the court had dismissed his client's divorce complaint for failure to state a cause of action; thereafter, the attorney submitted the uncontested divorce matter to another judge, who granted the divorce; several weeks later, the attorney denied to a third judge that he had altered the document); In re Cillo, 155 N.J. 599 (1998) (one-year suspension for attorney who falsely advised a judge that the case had been settled and that no one was appearing for a conference, knowing that at least one other attorney involved in the litigation was going to appear and that the terms of the order he presented to the court violated other relevant agreements between the parties; the attorney then presented the judge with an order favoring his client, which the judge signed; the judge learned the truth and rescinded the order requiring the turnover of approximately $1.5 million to the attorney's client; two prior reprimands); and In re Kornreich, 149 N.J. 346 (1997) (three-year suspension for attorney who had been involved in an automobile accident and then misrepresented to the police, to her lawyer, and to a municipal court judge that her babysitter had been operating her vehicle; the attorney also presented false evidence in an

attempt to falsely accuse the babysitter of her own wrongdoing).

Respondent's misconduct is similar to that in the Lawrence case (six-month suspension), in that both attorneys engaged in deception to advance their own personal, financial interests. Lawrence admitted that he failed to disclose, in his case information statement, and in schedules to his bankruptcy petition, his ownership of various assets. He did so, he claimed, because of the financial toll he suffered from his divorce and bankruptcy proceedings. His intent was to maintain an adequate lifestyle for the family members that remained with him after the divorce. Lawrence also had his stepson act as the purchaser/borrower of a home for his ailing parents. Lawrence could not qualify for a mortgage loan because of his bankruptcy.

We found that Lawrence's deceitful conduct "was aimed at two courts, his wife, and a mortgage company; was committed over an extended period of time (at least eight years); and encompassed numerous transactions, all designed to cover up substantial assets of the marital and bankruptcy estates." In the Matter of Herbert F. Lawrence, DRB 05-076 (July 7, 2005) (slip op. at 21). In mitigation, however, we considered that

Lawrence was "emotionally consumed by his divorce . . . and motivated by a desire to protect his family." Ibid.

Kernan also involved an attorney's personal interest. Kernan failed to disclose to the judge that presided over his divorce case that he had transferred property to his mother, for no consideration. His case information statement previously listed that asset. Kernan's purpose was to exclude the asset from equitable distribution. He received a three-month suspension.

Respondent's conduct was more serious than Kernan's, in that respondent physically altered documents submitted in connection with his child support proceedings. His conduct was more similar to Lawrence's, although not as widespread. On the other hand, there is no mitigation to consider here. In turn, special circumstances mitigated Lawrence's actions. We, therefore, determined that the same discipline imposed in Lawrence, a six-month suspension, is appropriate here.

Member Boylan would have imposed a censure.

One final point needs to be addressed. Respondent's counsel requests that, as part of respondent's discipline, he continue on the "inactive list" and that, on reinstatement, he be required to practice under the supervision of a proctor.

The procedure urged by counsel is not available in New Jersey, however. In some states, attorneys who fail to comply with certain requirements of the profession are placed on the inactive list. In Pennsylvania, for example, attorneys who do not pay the annual attorney assessment or do not comply with continuing legal education requirements are transferred to inactive status, Pa.R.CLE 111 and Pa.R.D.E. 219 (f)(1), and are considered to be "formerly-admitted attorneys." Pa.R.D.E. 217. If the attorney remains on the inactive list "for more than three years prior to resumption of practice," the attorney must go through a formal reinstatement process if he or she wishes to be restored to active status. Pa.R.D.E. 218(a).

New Jersey, however, does not place attorneys on an inactive list. For example, an attorney who does not pay the annual assessment to the New Jersey Lawyers' Fund for Client Protection is placed on an ineligible list. Upon payment of all sums due, the attorney is automatically restored to eligible status, without the need to petition for reinstatement.

In light of the above, we are unable to consider counsel's request that he continue on the "inactive list."

As to the suggestion that a proctorship be established upon reinstatement, we do not believe that the nature of respondent's infraction is of the sort that requires supervision by a proctor. That mechanism is employed when the conduct reflects either inexperience or lack of knowledge in a specific area of the law, or office disorganization, or a pattern of non-diligence in performing work for clients. None of these occurred here. Instead, respondent's conduct was the product of deceit.

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 Walter R. Dogan
Docket No. DRB 08-178

Argued: September 18, 2008

Decided: October 29, 2008

Disposition: Six-month suspension

| ***Members*** | Disbar | Six-month Suspension | Censure | Dismiss | Disqualified | Did not participate |
|---|---|---|---|---|---|---|
| Pashman | | X | | | | |
| Frost | | X | | | | |
| Baugh | | X | | | | |
| Boylan | | | X | | | |
| Clark | | X | | | | |
| Doremus | | X | | | | |
| Lolla | | X | | | | |
| Stanton | | X | | | | |
| Wissinger | | X | | | | |
| Total: | | 8 | 1 | | | |

Julianne K. DeCore
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Chief Counsel