

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 08-310

IN THE MATTER OF
RICHARD S. SERBIN
AN ATTORNEY AT LAW

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Decision

Argued: January 15, 2009

Decided: April 30, 2009

John J. McGill, III appeared on behalf of the Office of Attorney Ethics.

Respondent waived appearance for oral argument.

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 (six-month suspension) filed by the District VB Ethics Committee ("DEC"). Respondent and the Office of Attorney Ethics ("OAE") entered into a stipulation of facts in lieu of filing a complaint and answer, and agreed that the matter should proceed before the DEC for a hearing as to mitigation and/or aggravation, pursuant to R. 1:20-6(c)(1). Respondent stipulated

that he violated RPC 8.4(b) (commission of a criminal act that reflects adversely on the attorney's honesty, trustworthiness or fitness as a lawyer) and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation), based on his receipt of disability insurance benefits while gainfully employed. We determine that respondent's conduct warrants a six-month suspension.

Respondent was admitted to the New Jersey bar in 1972. He has no history of discipline.

Respondent retired from the practice of law on January 1, 2007.¹ The grievance in this matter was docketed in October 2006, prior to his retirement. There was a discussion, during the ethics hearing, about what effect, if any, respondent's retirement should have on these disciplinary proceedings. Exhibit J-2 is a letter from the OAE to the hearing panel chair, supplementing the record with the consent of respondent and his

¹ Respondent testified that he retired because of the pro bono requirement imposed on attorneys. Respondent was concerned about his ability to properly represent a client, given that he had not practiced law for years. He testified that he did not retire "to avoid [his] ethical responsibilities", adding that he had no idea that he would be subject to a hearing for his conduct.

Respondent was also a licensed pharmacist. He surrendered his pharmacist license at approximately the same time that he retired from the practice of law.

counsel. The letter states that the parties agreed that respondent's retirement from the bar should have no impact on the charges against him.

The conduct that gave rise to the disciplinary charges against respondent was as follows:

In July 1993, respondent suffered a stroke while employed as Executive Vice-President, General and Chief Regulatory Counsel for Bio-Imaging Technologies, Inc. After his stroke, respondent sought disability insurance benefits under his policy with Prudential Insurance Company ("Prudential"). From October 25, 1993 through October 29, 1998, he received benefits, under the Prudential policy, based on his inability to work in his occupational field. From October 30, 1998 through August 29, 2000, he collected \$170,774.05 in disability benefits, under the Prudential policy.

The policy precluded him from "doing any gainful work in any occupation for which he is reasonably suited by education, training or experience." During that same period, October 30, 1998 through August 29, 2000, respondent also received over \$200,000 in fees and expenses for providing professional consulting services to Strategic Medical Communications, Inc. and that company's wholly-owned subsidiary, HealthSTAR Communications, Inc.

By letter dated September 27, 2000, Reassure America Life Insurance Company ("Reassure"), successor carrier to Prudential, informed respondent that his benefits under the disability insurance policy were terminated because of his non-disclosed gainful work during the October 1998 through August 2000 period. Sometime thereafter, Reassure referred the matter to the New Jersey Attorney General for review of possible criminal conduct.

In August 2005, respondent pleaded guilty to one count of falsifying records, in violation of N.J.S.A. 2C:21-4(a), a fourth degree crime. In December 2005, he was admitted into the Essex County Pre-Trial Intervention Program ("PTI"), on condition that he perform fifty hours of community service and pay financial obligations imposed by the court. Those totaled \$220,869.05, including \$170,744.05 in restitution to Reassure, a \$50,000 Title 17 civil fine, and various court-imposed assessments. In January 2006, respondent paid the full \$220,869.05 in financial obligations.

By order dated February 2, 2006, the court discharged respondent from PTI and dismissed the falsifying records charge. The court also waived the community service requirement. On March 9, 2006, at the request of respondent's counsel and without objection from the State, the court amended the February

order to further vacate as null and void respondent's guilty plea.

At the DEC hearing, respondent testified that, at the time he sought and received the benefits from Prudential, he believed that he was entitled to them. He explained that, at the time of his guilty plea, he had changed his view about his entitlement.

Respondent admitted that he violated RPC 8.4(b) and RPC 8.4(c).

The OAE urged the imposition of a six-month suspension, believing that respondent's conduct fell in between that of the attorneys in In re Jaffe, 170 N.J. 187 (2001) (three-month suspension for guilty plea to theft by deception for false health insurance claims) and In re Berger, 151 N.J. 476 (1997) (two-year suspension for fraud and misrepresentation in connection with property insurance claims).

Respondent's counsel stated that he was not "quarrelling" with the OAE's recommendation for a six-month suspension, but urged the DEC to consider mitigating factors. Specifically, counsel pointed to respondent's quickly making full restitution, his physical difficulties, and the fact that he has not been a practicing attorney for fifteen years.

The DEC concluded that respondent violated RPC 8.4(b) and RPC 8.4(c). The DEC noted, in its report, that respondent has

no history of discipline, cooperated with the OAE throughout the proceeding, and "was in less than optimum health at the time the unethical conduct occurred."² The DEC agreed that respondent's retirement from the practice of law does not affect the disciplinary charges against him.

Upon a de novo review of the record, we are satisfied that the DEC's conclusion that respondent was guilty of unethical conduct is fully supported by clear and convincing evidence. Respondent's stipulation of facts and his testimony amply support a finding that he violated RPC 8.4(b) and RPC 8.4(c).

Discipline imposed for conduct similar to respondent's has ranged from a reprimand to a brief suspension. See, e.g., In re Rhody, 191 N.J. 87 (2007) (reprimand for guilty plea to one count of fourth degree tampering with records; the attorney made misrepresentations to his insurance company and the court when he collected long-term disability benefits without disclosing his hobby of buying and selling postcards, which generated no income to him); In re Gjurich, 177 N.J. 44 (2003) (reprimand imposed on attorney guilty of theft by deception for collecting unemployment benefits from the State of New Jersey while

² Respondent testified that he had also suffered from prostate cancer. The record does not reveal when he was afflicted with that illness.

employed as an attorney in a Pennsylvania law firm; the attorney committed a third degree offense, in violation of N.J.S.A. 2C:20-4 and N.J.S.A. 2C:28-3; the attorney was admitted into a PTI program for three years, ordered to pay \$11,000 in restitution and a \$7,500 fine, and required to perform fifty hours of community service); In re Ford, 152 N.J. 465 (1998) (reprimand for attorney who on at least ten occasions certified to the Division of Unemployment and Disability Insurance that he was entitled to unemployment benefits; the attorney failed to disclose the existence of his newly established law practice, which grew to be successful);³ and In re Jaffe, supra, 170 N.J. 187 (2001) (three-month suspension for attorney who, prior to entering PTI, pleaded guilty to one count of third-degree theft by deception, in violation of N.J.S.A. 2C:20-4; the crime involved the theft of \$13,000 from Blue Cross/Blue Shield through the submission of false health insurance claims for specially prescribed baby formula for the attorney's child; in mitigation, we considered that the conduct took place during a very emotional and difficult time in the attorney's life).

In In re Berger, supra, 151 N.J. 476 (1997), the attorney received property insurance proceeds, following a fire that

³ Ford did not face criminal charges.

damaged his law office. The attorney submitted false information to his insurance agent, with the intent to defraud the carrier. He was charged with one count of false swearing and entered PTI without admitting the charge. As noted previously, he received a two-year suspension.

The OAE and the DEC correctly noted that respondent's conduct does not rise to the level of that displayed in Berger and, therefore, does not require the measure of discipline imposed there - a two-year suspension. Our decision in Berger made no mention of mitigating factors and cited, in aggravation, that the attorney's acts had been committed for his personal benefit, when he sought to obtain insurance proceeds on behalf of his law firm.

The OAE and the DEC were also correct that harsher discipline than the three-month suspension imposed in Jaffe is required. First, a far greater sum of money is involved here; second, Jaffe was dealing with the very serious illness of his infant child. In this case, respondent received over \$170,000 to which he was not entitled and his misconduct lasted nearly two years, circumstances far worse than those seen in Jaffe.

On the other hand, respondent cooperated fully with the OAE, has no history of discipline in his thirty-five years at the bar and, as the DEC observed, was dealing with his own

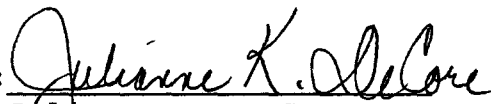
health issues. Moreover, respondent is retired from the practice of law.

Comparing respondent's conduct to that of the above-cited cases, we determine that the appropriate level of sanction in this case is a six-month suspension.

Members Baugh, Boylan, Clark, and Lolla did not participate.

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
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

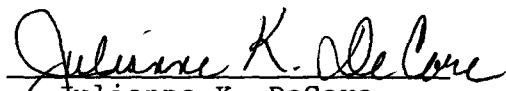
In the Matter of Richard S. Serbin
Docket No. DRB 08-310

Argued: January 15, 2009

Decided: April 30, 2009

Disposition: Six-month suspension

| Members | Disbar | Six-month Suspension | Reprimand | Dismiss | Disqualified | Did not participate |
|-----------|--------|-------------------------|-----------|---------|--------------|------------------------|
| Pashman | | X | | | | |
| Frost | | X | | | | |
| Baugh | | | | | | X |
| Boylan | | | | | | X |
| Clark | | | | | | X |
| Doremus | | X | | | | |
| Lolla | | | | | | x |
| Stanton | | X | | | | |
| Wissinger | | X | | | | |
| Total: | | 5 | | | | 4 |


Julianne K. DeCore
Chief Counsel