SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 06-186
District Docket No. IV-04-0054E

IN THE MATTER OF	:
PATRICK W. GEARY	:
AN ATTORNEY AT LAW	:

Decision

Argued: September 21, 2006

Decided: December 1, 2006

Robert Harbeson appeared on behalf of the District IV Ethics Committee.

John M. Mills, III 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 recommendation for a three-month suspension filed by the District IV Ethics Committee ("DEC"). The complaint charged respondent with violating RPC 1.1(a) (gross neglect), RPC 1.1(b) (pattern of neglect), RPC 1.3 (lack of diligence), RPC 1.4(a) (failure to keep clients reasonably informed about the status of matters or to comply with

reasonable requests for information), and RPC 8.4(c) (misrepresentation). These charges stem from respondent's misrepresentations to his employer and clients and fabrication of documents to conceal his failure to prepare and file certain regulatory documents. Respondent admitted the allegations of the complaint. He did not testify at the DEC hearing, which, for the most part, was confined to the submission of documents into evidence. We determine that a two-year suspension is warranted.

Respondent was admitted to the New Jersey and Pennsylvania bars in 1997. He has no history of discipline. At the relevant time, he was an associate with the firm of Frederic Marro and Associates, P.C. ("the firm"), the grievant, located in Haddonfield, New Jersey.

The firm employed respondent from September 1997 until August 10, 2004. Generally, respondent's responsibilities included working on "certain projects" for insurance companies or their general agents or attorneys. More specifically, respondent was responsible for the preparation of regulatory filings in various states: "putting together applications for insurance companies and [submitting] form and rate filings to the departments of insurance of various states in which carrier clients wished to conduct business;" and obtaining the particular

states' approval for various types of insurance – a pre-requisite for the insurers' ability to market their insurance products.

At some point, respondent began to fall behind in his work. In 2001 and 2002, he failed to prepare various form and rate filing applications. Nevertheless, he misrepresented to his clients that the required documents had been prepared and filed with the various departments of insurance.

Although he initially believed that he could catch up and "back-fill" the work, he was unable to do so. In some cases, instead of preparing or filing the applications, he created paperwork to submit to the firm's clients to mislead them that their matters were progressing.

As respondent fell further and further behind in his work, he compounded his misrepresentations to the firm and its clients "with more fabrications" to try to satisfy all of their inquiries about the status of the rate filings. He falsified paperwork, including form and rate filings, and correspondence to and from various state departments of insurance. He also provided some clients with paperwork bearing "approved stamps" to make it appear that the approvals had been obtained from the departments of insurance from certain states. Respondent himself had "produced" the stamps for the paperwork.

Respondent spent most of his time in the later stages of his employment simply manufacturing information regarding the status of matters, approvals, and so on. He became "more and more emotionally upset as the backlog and lies snowballed." At the DEC hearing, the presenter stated that respondent spent an enormous amount of time creating files that he had not generated so that he could show his employer and clients that work had been accomplished; the lie "fed on itself."

According to the complaint, "[o]n information and belief, the firm's clients acted upon the false approvals to their detriment." The investigative report stated that respondent advised two clients that they had received approvals in twenty to thirty designated states. Based on the false approvals, the insurance companies proceeded to write insurance in those states.

At the DEC hearing, the presenter acknowledged that respondent did not know "how to get out from under" his deception or whom to tell about it. As the situation worsened, respondent wrote a letter of resignation so that his employer and the firm's insurance carrier could rectify the problems that he had created.

On August 10, 2004, respondent submitted to the firm a hand-written letter of resignation, which stated:

> This is my letter of resignation. I am resigning because I have lied to the company and to clients concerning filings and approvals. The two requests attached concern

> filings I had advised clients were approved when they had not actually been submitted. (for NY Life and HCC/U.S. Specialty). In the case of NY Life, I produced a false document appearing to be an approval from the TXDOI. I also took similar action on an [sic] NY Life filing in Florida. I did also falsely advise HCC/O.S. [sic] Specialty of a number of approvals on their occupational accident filing. I have given similar advice to Discover Re on their project. On the Aetna student project, I advised the company that filings for WV & TX were submitted when they were not. I have also advised AIG/America general [sic] that their Kansas credit filing has been submitted when it was not, and advised Darwin that their AR-1 filing for WI was submitted when it was not. Finally on the Delta Dental project I have advised the company that AZ & TN filings have been approved when they have not been submitted.
>
> I have absolutely no excuses for my actions. Although I understand that it will mean little to you I do sincerely apoligize [sic] to you, as well as my former colleagues and former friends, and the clients whose trust I betrayed.
>
> [Ex.1 at 3.][1]

In his answer, respondent admitted that his conduct violated the rules set forth in the ethics complaint. In mitigation, he offered his lack of an ethics history, his relative youth and inexperience, and the pressures placed on him at work.

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[1] Ex.1 refers to the exhibit attached to the hearing panel report.

According to the investigative report, respondent expressed great remorse for the events leading to his resignation. He apologized for his actions and regretted taking the "cover up" approach for failing to complete his assigned work. At the DEC hearing, the presenter highlighted respondent's full cooperation with the investigation, "extraordinary" remorse, and desire not to contest the charges against him.

The investigative report stated that, during the DEC's investigation, the firm's attorney, who did not testify, informed the presenter that the firm immediately reported respondent's misconduct to its malpractice carrier and to each of the affected insurance companies. The firm also contacted each of the states in which forms were to have been filed, in order to determine the actual status of the filings, how far the processes had gone, if at all, and the status of the approvals. The firm was attempting to assess the damage caused by respondent's actions, including the consequences to the insurance companies for having written non-approved lines of business in various states.

After respondent's resignation in 2004, his employment consisted of reviewing elementary school standardized tests for two months. In February 2005, he was hired by Hudson Global Services' legal division, a "temp" agency, in Philadelphia, Pennsylvania, to

conduct document reviews (inspection and production) for a large law firm involved in pharmaceutical litigation.

Based on respondent's admission to the allegations of the complaint, the DEC found that he engaged in unethical conduct by violating RPC 1.1(a) and (b), RPC 1.3, RPC 1.4(a), and RPC 8.4(c).

The DEC discounted respondent's claims of contrition and remorse because he did not testify. The DEC considered, as mitigation only, his lack of disciplinary history, admission of wrongdoing, and cooperation with the DEC investigation. The DEC recommended a three-month suspension.

Following a de novo review of the record, we are satisfied that the DEC's finding that respondent's conduct was unethical is supported by clear and convincing evidence.

Respondent did not deny his conduct. After approximately four years of employment with the firm, he began experiencing problems completing his work. Rather than alerting his superiors to his difficulties, respondent embarked on a path of deceit and deception. At first, he lied to clients and supervisors about the progress of his work. He then stepped up the deception by creating false documents and correspondence to and from the departments of insurance to create the illusion that required rate and form filings had been completed, filed, and approved. Things "snowballed" to the point that, near the end of his employment,

respondent devoted the majority of his time manufacturing information.

Although respondent did not submit any evidence relating to his mental state, the presenter noted that respondent's misconduct resulted in an "emotional upset," eventually leading to his August 10, 2004 letter of confession and resignation. According to his attorney, however, he did not seek professional help for his problems.

As of the date of the DEC hearing, the firm had not fully assessed the damage stemming from respondent's misconduct. The record is clear, however, that certain insurers had unwittingly begun marketing products without valid approvals.

Respondent's persistent failure to prepare the form and rate filing applications for his clients amounted to lack of diligence and gross neglect, and also, given the seven companies affected by his conduct, a pattern of neglect also emerges. In addition, respondent failed to communicate with clients by withholding information about the true status of their matters and, most egregiously, engaged in a massive cover-up through the creation of "approvals" from regulatory authorities. Altogether, respondent violated RPC 1.1(a), RPC 1.1(b), RPC 1.3, RPC 1.4(a), and RPC 8.4(c).

The only issue left for determination is the quantum of discipline. The sanction imposed on attorneys who have lied to clients or supervisors or who have forged documents to conceal their mishandling of legal matters has covered a broad spectrum depending on the specific facts of each case. The Court has considered the extent of the wrongdoing, the harm to the clients or others, and mitigating circumstances. See, e.g., In re Sunberg, 156 N.J. 396 (1998) (reprimand for attorney who created a phony arbitration award to mislead his partner, and then lied to the Office of Attorney Ethics ("OAE") about the arbitration award; mitigating factors included the passage of ten years since the occurrence, the attorney's unblemished disciplinary record, his numerous professional achievements, and his pro bono contributions); In re Rohan, 184 N.J. 287 (2005) (three-month suspension, in a default matter, for attorney who in one of three matters failed to advise his supervising attorney and his client that a settlement conference had been scheduled, that the conference had taken place, and that he had settled the case without authority to do so; thereafter, the attorney made misrepresentations about the status of the case; he also failed to communicate with his clients or abide by one client's decision about the representation; engaged in gross neglect and misrepresentations, and failed to withdraw from the representations

when his mental condition materially impaired his ability to represent his clients); In re Barry, 90 N.J. 286 (1982) (three-month suspension for young, inexperienced attorney who was given important responsibilities from the beginning of his employment and who performed no work on numerous files, later misrepresenting that the cases were in various stages of litigation; also, the attorney borrowed money from two clients and performed legal work as an offset against the loans, thereby violating his firm's policy; to placate clients, in one instance the attorney advanced his own funds and, in another, co-signed a $7000 note; noting that ordinarily the attorney's violations would call for more severe discipline, the Court imposed a three-month suspension because of substantial mitigating circumstances: the attorney's quick admission of wrongdoing, his full cooperation in setting matters aright, the lack of pecuniary loss to the clients, his marital difficulties, his voluntary withdrawal from the practice of law, the fact that he sought psychiatric help, his resolute and apparently successful efforts at rehabilitation, and his cooperation with disciplinary authorities by bringing to their attention two other transactions that might have involved ethics violations; the Court also considered that this young attorney was unable to cope with the demands of an active practice law and remarked that "[n]atural talent is no substitute for the crucible

of experience." Id. at 291); In re Bosies, 138 N.J. 169 (1994) (six-month suspension for misconduct in four matters, including pattern of neglect, lack of diligence, failure to communicate with clients, failure to abide by discovery deadlines contained in a court order, failure to abide by the clients' decisions concerning the representation, and pattern of misrepresentations; for a period of five months the attorney engaged in an elaborate scheme to mislead his clients that, although he had subpoenaed a witness, the witness was not cooperating; to "stall" the client, the attorney prepared a motion for sanctions against the witness, which he showed the client but never filed with the court; he then informed the client that the judge had declined to impose sanctions; thereafter, the attorney traveled three hours with his client to a non-existent deposition, feigned surprise when the witness did not appear, and then traveled to the courthouse purportedly to advise the judge of the witness's failure to appear at the deposition; although the attorney's conduct involved only four matters, the six-month suspension was predicated on his pattern of deceit); In re Brown, 167 N.J. 611 (2001) (one-year suspension in a default matter for attorney who, while employed as an associate in a law firm, mishandled twenty to thirty cases by failing to conduct discovery, to file required pleadings and motions, to prepare and file necessary legal memoranda/briefs, and to prepare the matters

for trial; the attorney repeatedly misrepresented the status of the cases and his whereabouts to his supervisors in order to conceal the status of the matters entrusted to him; the attorney had a prior reprimand); In re Weingart, 127 N.J. 1 (1992) (two-year suspension, all but six months suspended, for lack of diligence, failure to communicate, dishonesty and misrepresentation, and conduct prejudicial to the administration of justice; the attorney lied to his client about the status of the case and prepared and submitted to his client, to the Office of the Attorney General, and to the Administrative Office of the Courts a fictitious complaint to mislead the client that a lawsuit had been filed); In re Alterman, 126 N.J. 410 (1991) (two-year suspension for attorney guilty of lack of diligence, gross neglect, and pattern of neglect in five matters, false statement of a material fact to a tribunal in one matter, conduct involving dishonesty, fraud, deceit or misrepresentation in four matters, failure to withdraw from or to decline representation, practicing law while ineligible, and failure to cooperate with disciplinary authorities by not filing an answer to an ethics complaint; specifically, during his successive employment with two multi-member law firms, the attorney got in over his head and neglected several matters assigned to him either by not pursuing them at all or by allowing the pleadings to be dismissed or suppressed; to cover up his inaction, the attorney

lied to his clients that the cases were proceeding apace, fabricated documents to mislead his supervisors and the clients that the matters were progressing normally, and misrepresented to a judge that he had authority to settle a suit on behalf of a client; in the last instance, when confronted by his superiors, the attorney denied rumors that the matter had been settled and also denied knowledge of the draft settlement agreement; he finally admitted his misconduct when his superiors were about to telephone his adversary; in mitigation, the attorney testified that his work was unsupervised and that he suffered from psychological illness; although we found a causal link between the attorney's acts of misconduct and his psychological problems, we determined that the abominable nature of his behavior merited a two-year suspension); In re Pearn, 172 N.J. 316 (2002) (three-year suspension, on a motion for reciprocal discipline, for attorney who charged excessive fees and engaged in a pattern of misrepresentations to clients and courts by billing numerous clients for approximately 340 hours of services not provided, requiring his firm to refund between $30,000 and $40,000; the attorney did not inform the clients that he had not performed the services for which they had paid and that their cases could have been adversely affected; the attorney had fallen behind in his work and had billed for services he intended to perform in the future); In re Penn, 172 N.J. 38

(2002) (three-year suspension in a default matter for attorney who failed to file an answer in a foreclosure action, thereby causing the entry of default against the client; thereafter, in order to placate the client, the attorney lied that the case had been successfully concluded, fabricated a court order, and signed the name of a judge; the attorney then lied to his adversary and to ethics officials; the attorney also practiced law while ineligible); In re Meyers, 126 N.J. 409 (1991) (three-year suspension for attorney who prepared and presented to his client a fictitious divorce judgment in order to conceal his failure to advance an uncomplicated divorce matter for approximately two years; the attorney then asked his client to misrepresent to the court that the divorce judgment had merely been a draft and misrepresented to a court intake officer that the fabricated divorce judgment had been a mere draft and that his client had misunderstood its significance; the attorney also made other misrepresentations to his client and covered up the divorce action filed by husband); and In re Yacavino, 100 N.J. 50 (1985) (three-year suspension for attorney who prepared and presented to his clients two fictitious orders of adoption to conceal his neglect in failing to advance an uncomplicated adoption matter for nineteen months; the attorney misrepresented the status of the matter to his clients on several occasions; in mitigation, the Court considered

the absence of any purpose of self-enrichment, the aberrational character of the attorney's behavior, and his prompt and full cooperation with law enforcement and disciplinary matters).

We considered that respondent's conduct was as serious as that displayed in cases that led to lengthy suspensions: Brown (one-year in a default matter for grossly neglecting twenty to thirty files and misrepresenting their status and his whereabouts to his supervisors); Alterman (two years for a pattern of gross neglect, and lack of diligence, false statements to a tribunal, lying to clients and fabricating documents to mislead clients and supervisors); Pearn (three years for billing clients for approximately 300 hours of work not provided); Penn (three years in a default matter for permitting a default in the client's matter, lying that the case had been successfully concluded, fabricating a court order, forging judge's signature, lying to adversary and ethics authorities, and practicing while ineligible); Meyers (three years for creating fictitious divorce judgment and asking client to make misrepresentations to the court); and Yacavino (three years for fabricating two fictitious orders of adoption to conceal neglect and misrepresenting status of the matter to clients).

When an attorney perpetrates a fraud upon the court, that conduct poisons the streams of justice, warranting severe

discipline. In re Yacavino, supra, 101 N.J. at 55; In re Stein, 1 N.J. 228, 237-38 (1949). Such conduct weighed heavily, in our view, in the three-year suspensions imposed in Myers and Yacavino. Although respondent's conduct did not involve the forging of court documents, the creation of bogus regulatory approvals is deserving of comparable discipline. Respondent's fabrications were calculated and repetitive, and sustained, spanning a period of years. When his mere misrepresentations no longer satisfied the firm and its clients, he compounded the situation by creating documents and correspondence to mislead his clients and supervisors that filings had been submitted and/or approved by various departments of insurance, thereby causing clients to improperly conduct business in those states. The harm to the firm's clients and its reputation may be considerable. Misconduct of this kind and scale simply cannot by excused by respondent's relative youth and inexperience as a lawyer.

As mitigation, we have considered that respondent self-reported his misconduct to his firm, and that the pressures of his job might have contributed to his offenses. After balancing respondent's grievous conduct with the mitigating circumstances, we determine that a two-year suspension is appropriate in this case.

We further determine that, prior to reinstatement, respondent should provide proof of fitness to practice law by a mental health

professional approved by the OAE. Moreover, upon reinstatement, he should practice under the supervision of an OAE-approved proctor for one year.

Members Boylan, Stanton and Wissinger 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
William J. O'Shaughnessy, Chair

By: _____
Julianne K. DeCore
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Patrick W. Geary
Docket No. DRB 06-186

Argued: September 21, 2006

Decided: December 1, 2006

Disposition: Two-year suspension

Members	Two-year Suspension	Reprimand	Dismiss	Disqualified	Did not participate
O'Shaughnessy	X				
Pashman	X				
Baugh	X				
Boylan					X
Frost	X				
Lolla	X				
Pashman	X				
Stanton					X
Wissinger					X
Total:	6				3

Isabel Frank

By Julianne K. DeCore
Chief Counsel