

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 05-223
District Docket No. XIV-04-404E

IN THE MATTER OF
CHARLES R. THOMAS
AN ATTORNEY AT LAW

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Decision

Argued: September 15, 2005

Decided: October 26, 2005

Richard J. Engelhardt 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 by way of a disciplinary stipulation between the Office of Attorney Ethics ("OAE") and respondent. Respondent admitted violating 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 reprimand.

Respondent was admitted to the New Jersey bar in 1985. He maintains a law practice in Paterson, New Jersey. He has no history of discipline.

Respondent is a sole practitioner who, prior to July 2004, held the positions of Clerk of the Passaic County Board of Chosen Freeholders and County Treasurer, at salaries of \$62,148 and \$10,000, respectively. As Clerk of the Board of Freeholders, respondent controlled the Passaic County motor vehicle pool.

In February 2004, respondent lent a motor pool vehicle to a Passaic County Juvenile Detention Center maintenance worker, Fredrick Brewer, to enable him to commute to work. That was an improper use of the vehicle. In addition, respondent knew that Brewer did not possess a valid driver's license at the time. Respondent considered Brewer, who was a close family friend, as his "unofficial foster son" or as a "little brother." In a statement to the Passaic County Prosecutor's Office, respondent explained that Brewer was his second cousin and that he had acted as his "surrogate father" since he was a young boy.

In the early morning of June 27, 2004, Brewer was involved in a motor vehicle accident with the borrowed pool car. He collided with another vehicle driven by Daisy Ward and fled the scene of the accident. Ward sustained injuries in the collision.

Shortly after the accident, respondent met with Brewer and Brewer's supervisor from the Center. They agreed that Brewer's supervisor would publicly justify Brewer's use of the vehicle, which they knew was improper.

The Passaic County Prosecutor's office became involved in an investigation of the matter. Pursuant to an agreement with Passaic County Sheriff's detectives, on Monday, June 28, 2004, respondent accompanied Brewer to Wayne, New Jersey Municipal Court, to satisfy outstanding warrants affecting Brewer's driver's license. Respondent also "arranged for an attorney to represent Brewer," and escorted Brewer to the Sheriff's Office to surrender.

Brewer falsely stated to the Passaic County Sheriff's detectives that he had been using the pool vehicle that evening to "respond" to his sick daughter. On June 30, 2004, in a statement to the detectives investigating the matter, respondent falsely corroborated Brewer's account of the incident. On July 12, 2004, in a subsequent statement to the Passaic County Prosecutor's Office, respondent admitted that he had earlier "made an inaccurate statement" to the Sheriff's department to cover up the motor pool vehicle's misuse.

The County reprimanded respondent for his involvement in the matter. Subsequently, he resigned from his positions as

Clerk of the Passaic County Board of Freeholders and Passaic County Treasurer. Although criminal charges were filed against him, the Passaic County Prosecutor's Office dismissed the charges. Subsequently, a Passaic County Freeholder brought suit seeking to reinstate the charges, but a Superior Court Judge ruled that the Prosecutor's Office had not abused its discretion in dismissing the charges.

The stipulation cited as mitigating factors: (1) that respondent has an unblemished record as an attorney; (2) that his motivation for the unethical conduct was not financial gain or part of an elaborate scheme to mislead an investigation over an extended period of time, but the desire to help and protect an individual with whom he shared a close relationship; (3) that, "'as the heat of the moment' subsided, respondent voluntarily corrected his statements to authorities"; (4) that no one was injured by the misrepresentations; (5) that he had a history of service to his community, including as a municipal court judge, as freeholder clerk, and as county treasurer; and (6) that his conduct was aberrational and unlikely to recur.

The stipulation included only one aggravating factor – that attorneys who hold public office are vested with the public trust and are more visible to the public.

Following a de novo review of the record, we find that the stipulated facts establish by clear and convincing evidence that respondent's conduct was unethical.

Respondent stipulated to violating RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation) and RPC 8.4(d) (conduct prejudicial to the administration of justice). The only issue left for determination, thus, is the quantum of discipline.

This is not the typical case where an attorney has made misrepresentations to his client about the status of the matter, to the courts about a client's case, or to a disciplinary authority about the attorney's own ethics matter. Rather, respondent made misrepresentations to investigators, not only to benefit a close family friend, but to benefit himself, to the detriment of the public.

During respondent's initial interview by the prosecutor's office, he admitted that he was responsible for the county vehicles. He claimed that he assigned a pool car to the juvenile detention center because of a shortage of vehicles there, and that Brewer got into an accident with the vehicle while going to see his sick daughter. In a subsequent interview, however, respondent admitted that he improperly permitted Brewer to use the vehicle to get back and forth to work. Moreover, respondent

was aware that Brewer's girlfriend also drove the car. An aggravating factor is that, once Brewer notified respondent about the accident, respondent contacted the director at the Center and suggested to her that they take the position that Brewer had had the accident while on the job. Thus, not only did respondent make misrepresentations about the situation, but he enlisted another person to participate in the deception.

Respondent stipulated that he was trying to protect Brewer. However, he was also protecting himself by concealing that he had authorized and facilitated the misuse of government property. His motive could not have been entirely altruistic. It is more likely that respondent was trying to cover up his own improprieties in order to preserve his employment with the County. Ultimately, he resigned from the County positions.

The following cases are helpful in analyzing the appropriate discipline to impose. In In re Myers [Cynthia Sharp Myers, f/k/a Cynthia Sharp], 178 N.J. 4 (2003), an attorney was censured for falsely denying to the police, in a capital murder investigation, that she had had a conversation with an individual about the murderer's desire to find someone to kill his wife. In re Myers, Docket No. DRB 03-151 (August 25, 2003) (slip op. at 2). More than two years later, the attorney was again interviewed. This time she truthfully related the conversation she had had with the

individual, (ibid.), and later testified accordingly at the trial and retrial of the murderer (id. at 3). The attorney claimed that she initially lied to the police because she was taken aback during that interview and did not "[consider] it a formal investigation." The attorney had a prior reprimand for making false or misleading communications about her services. In re Sharp, 157 N.J. 27 (1999).

An attorney received a three-month suspension for misrepresenting to a police officer that his client was on vacation, knowing that the client was incarcerated in New York. In re Devin, 138 N.J. 46 (1994). He also made misrepresentations about the status of a mortgage commitment, failed to keep a client reasonably informed about the status of a matter and engaged in conduct prejudicial to the administration of justice by making misrepresentations to a police officer conducting an official investigation. See also In re Farr, 115 N.J. 231 (1989) (six-month suspension where attorney, while serving as an assistant prosecutor, lied to the Attorney General's Office during the course of an official investigation by denying his use and possession of controlled dangerous substances; the attorney also stole evidence (marijuana and PCP) for his personal use and that of his friends); In re Kantor, 165 N.J. 572 (2000) (reprimand where attorney misrepresented to a municipal court judge that he

had insurance coverage on his automobile on the day of an accident); and In re Lewis, 138 N.J. 33 (1994) (attorney admonished where, during a municipal court hearing on heating system violations on rental property he owned, he 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; the Disciplinary Review Board considered that the court had not been deceived and that no injuries resulted from the attorney's actions).

According to the stipulation, one mitigating factor was respondent's motivation - to help and protect Brewer. However, respondent's initial explanation for Brewer's use of the car also served to conceal his own improper conduct - assigning a pool vehicle for an unauthorized use and doing so with the knowledge that Brewer did not have a valid driver's license. Moreover, we give little weight to respondent's "service to the community," since he was paid for his services.


We considered, however, that respondent has no history of discipline, that he cured his misstatements to investigators within a short period of time, and that he resigned from his public positions. On balance, we find that respondent's conduct was most similar to that of attorney Myers/Sharp, who was

censured for lying to investigators during a murder investigation.

We, therefore, determine that a censure adequately addresses respondent's misconduct. Members Lolla and Stanton voted for a three-month suspension. Vice-Chair O'Shaughnessy did not participate.

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

Disciplinary Review Board
Mary J. Maudsley, Chair

By: 
Julianne K. DeCore
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

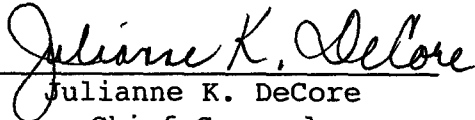
In the Matter of Charles R. Thomas
Docket No. DRB 05-223

Argued: September 15, 2005

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Disposition: Censure

Members	Disbar	Three-month Suspension	Censure	Dismiss	Disqualified	Did not participate
Maudsley			X			
O'Shaughnessy						X
Boylan			X			
Holmes			X			
Lolla		X				
Neuwirth			X			
Pashman			X			
Stanton		X				
Wissinger			X			
Total:		2	6			1


Julianne K. DeCore
Chief Counsel