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SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 99-298

IN THE MATTER OF :
:
K. KAY SHEARIN :
:
AN ATTORNEY AT LAW :
:

Decision

Argued: December 16, 1999

Decided: July 17, 2000

Richard J. Englehardt appeared on behalf of the Office of Attorney Ethics.

Patricia Slane Voorhees 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 motion for reciprocal discipline filed by the Office of Attorney Ethics ("OAE"), based on the Delaware Supreme Court's decision to suspend respondent for one year. Respondent was admitted to the New Jersey bar in 1980 and the Delaware bar in 1986. She has been on the ineligible list of the New Jersey Lawyers' Fund for Client Protection since September 25, 1995. Respondent has no history of discipline.

Respondent's misconduct included violations of the equivalent of New Jersey's RPC 3.3(a)(1) (a lawyer shall not knowingly make a false statement of material fact or law to a tribunal), RPC 3.5(c) (conduct intended to disrupt a tribunal)¹, RPC 1.2(d) (a lawyer shall not counsel a client to engage or assist a client in conduct that the lawyer knows is criminal or fraudulent), RPC 3.1 (a lawyer shall not bring a non-meritorious claim before the court), RPC 3.2 (failure to expedite litigation), RPC 3.3(a)(4) (failure to disclose to a tribunal legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel), RPC 3.4(b) (a lawyer shall not falsify evidence, counsel or assist a witness to testify falsely) and RPC 4.1(a)(1) (a lawyer shall not make a false statement of material fact or law to a third person). Respondent's specific misconduct was set forth in the Delaware Supreme Court's decision.

Respondent's violations arose from her conduct in a dispute initiated by Mother African Union First Colored Methodist Protestant Church ("The Church") against the Conference of African Union First Colored Methodist Protestant Church ("The Conference") and Bishop Delbert L. Jackson ("The Bishop"). The Conference is a religious association with which various African Methodist Protestant churches have been affiliated. Respondent was legal counsel for the Conference. She also represented the Conference and the Bishop in litigation and certain transactions.

¹ The Delaware rule also prohibits an attorney from engaging in conduct that is undignified, discourteous or degrading to a tribunal.

The Church had been affiliated with the Conference until April 1991, when it took steps to secede from the Conference. At that time, the Church owned certain properties in Wilmington, Delaware. Prior to the Church's secession, the Bishop executed a deed ("first deed") purporting to transfer ownership in the properties from the Church to the Conference. Respondent prepared and recorded the deed. Thereafter, on April 18, 1991, after the Church seceded from the Conference, the Church filed suit against the Conference and the Bishop. The Court of Chancery, New Castle County, entered a temporary restraining order and then a preliminary injunction against the defendants, preliminarily finding that the Church owned the properties. A final judgment was entered in April 1992, declaring (1) that the power to control the disposition of the properties was vested solely with the Church, (2) that such ownership had not been ceded to the Conference or the Bishop, (3) that the properties had never been validly conveyed to the Conference and (4) that the deed was void.

The Court of Chancery entered an injunction prohibiting the Conference and the Bishop from interfering with the Church's title, use, enjoyment or operation of the properties. That final judgment was affirmed by the Delaware Supreme Court in October 1993. Thereafter, the United States Supreme Court denied a petition for a writ of certiorari.

On December 13, 1993, the Bishop executed another deed ("second deed"), which respondent also prepared and notarized. The second deed was prepared without notice to the Church or the Court of Chancery. It purported to transfer ownership interests in "the

properties" to "certain third parties." Respondent recorded the second deed on December 27, 1993, without notice to the Church or the Court of Chancery.

In May 1994, at the direction of the Bishop, respondent filed an action in Sussex County on behalf of the Conference, seeking a judicial determination of the ownership of the properties, the same issue already adjudicated before the Court of Chancery, New Castle County. In response to the action, the Church requested that the Court of Chancery declare the second deed void, dismiss the action and hold respondent in contempt for having violated the Court of Chancery's previous final judgment. In July 1995, the Court of Chancery dismissed the action and ruled that respondent's conduct was in contempt of its prior final judgment. It also determined that the second deed was void "ab initio" to the extent that it purported to transfer any interest in the properties.

Several weeks later, the Bishop executed a document titled "Certificate of Restoration, Renewal or Revival of the Certificate of Corporation of the African Methodist Protestant Church." ("The certificate"). That document, which was notarized by respondent, was filed with the Division of Corporations, Secretary of State of Delaware, on June 5, 1995.

The Court of Chancery, New Castle County, denied the Conference's subsequent motions for relief from the July 1995 judgment and for a new trial. It concluded that the motions were predicated on the basis of "manufactured evidence," specifically the certificate. The court further ruled that respondent's assistance in preparing and filing the certificate was a willful act of contempt, in violation of the second final judgment that had been entered in

1995. The court's order further characterized the assertions contained in the certificate as "utterly" and "knowingly" false, and as having been made for the purpose of circumventing its orders. The Court of Chancery further declared the certificate to be null and void ab initio, stating that the filing of the certificate was the " 'latest manifestation of their [respondent, the Bishop and the Conference] contumacious refusal to accept and abide by the determinations of the orders of the courts of this state in this action.' " The Court of Chancery referred its order to the Delaware Office of Disciplinary Council ("ODC") for possible disciplinary action against respondent.

On July 31, 1995, respondent filed a complaint against the Church in the Superior Court, New Castle County, based in part on the certificate. The complaint once again raised issues already adjudicated by the Court of Chancery and addressed in its order. The Superior Court dismissed the complaint with prejudice on September 25, 1995, holding that the filing of the action was in "direct violation" of the final judgment and other orders of the Court of Chancery. The Superior Court also sent a copy of its findings to the ODC for possible disciplinary action against respondent.

In the initial action brought by the Church, the Court of Chancery found that respondent inconsistently informed the court at times that she represented a particular client and, at other times in the same litigation, that she did not represent that client. More specifically, in April 1991, the Court of Chancery issued a temporary restraining order directing the Bishop and his " 'agents, employees, officers, successors, assigns, and all others

acting in concert with him' " to permit access for the conduct at funerals and weddings, as requested by the Church. The Church's attorney approached respondent and requested that she contact the Reverend Thomas E. Moon ("Moon") to make appropriate arrangements for a funeral, in accordance with the Court of Chancery's order. Moon had been designated as the pastor of the Church by the Bishop. Thus, the Church's attorney considered that Moon was aligned with and was otherwise thought to be a servant, employee or agent of the Bishop. Respondent informed the attorney that she did not want to be involved with the arrangements and that Moon should be contacted directly to arrange funerals. She informed the attorney that she did not represent Moon. When the attorney sought to take Moon's deposition, respondent informed him that she was not Moon's attorney, would not be representing him and that the Church's attorney would have to subpoena Moon to obtain his testimony. Thus, from April 1991 until the trial took place in September 1991, the Church's attorney contacted Moon directly to arrange for weddings and funerals.

One of the Church's attorneys, Thomas Neuberger, communicated directly with Moon during the trial, based on the understanding that respondent did not represent him. On September 17, 1991, Neuberger informed Moon that he would not be called to testify at the trial and could leave the courthouse. The following day, respondent sent a letter to the Court of Chancery, contending, for the first time, that she represented Moon and that Neuberger's direct communication with Moon was unethical. Respondent also wrote to the ODC

regarding Neuberger's alleged unethical conduct. The ODC did not take any action against Neuberger.

Later, the Court of Chancery instructed respondent to contact Moon, pursuant to its earlier order, to schedule a funeral. Respondent refused to obey the court's instructions. The Church's attorney, therefore, made a motion to the Court of Chancery to have respondent held in contempt of court. The court declined to find respondent in contempt, concluding that it would be more appropriate to decide whether her conduct violated Chancery Court Rule 11.² The Court of Chancery found that the court rule was applicable, based on " . . . [respondent's] inconsistent litigation positions concerning her legal representation of Reverend Moon. Because those positions were both subjects of a 'pleading, motion [or] other paper of a party . . . signed by [an] attorney of record,' that conduct implicated, and could be addressed under the rubric of chancery rule 11."

In an appeal to the Delaware Supreme Court from the initial New Castle County proceeding, respondent filed a reply brief "castigating the trial judge in personal terms and suggesting that there were rumors that he had been bribed by her opposing party." The Delaware Supreme Court excluded respondent's brief. Its opinion stated that "[respondent's] reply brief purports to contain legal argument constituting an ad hominem attack on the trial [sic], is disrespectful and contains immaterial, impertinent and scandalous

² Del. Ch. Ct. R. 11 deals with representations to the court by way of pleading, motion or other papers.

matter." According to the Delaware Supreme Court, respondent's brief accused the trial judge of the following: "[u]nfortunately, refusing to consider the evidence was not the only time the vice chancellor wandered beyond the bounds of judicial propriety; [H]is hostility to [respondent] at every hearing was so apparent that observers in the courtroom, including newspaper reporters, repeatedly commented on it and asked [respondent] whether she believed the rumors that the vice chancellor had been bribed to favor Plaintiffs; Among practicing lawyers in Wilmington, [Vice Chancellor] Jacobs is reputed to have a quick temper"

Finally, respondent was charged with ethics violations stemming from her participation in a bankruptcy case. The ODC charged that respondent assisted in filing a bankruptcy petition that contained fraudulent claims concerning the assets and liabilities of respondent's debtor client. The Delaware Supreme Court relied on the bankruptcy's court memorandum opinion in support of its finding that respondent violated the equivalent of New Jersey's RPC 1.2(d) and RPC 3.1. The Delaware Supreme Court found clear and convincing evidence that respondent had assisted a client in known fraudulent conduct, as set forth in the bankruptcy court's opinion. The Delaware Supreme Court also found sufficient evidence that respondent had violated RPC 3.1 by engaging in frivolous litigation, when she filed a bankruptcy petition on behalf of her client. The bankruptcy court dismissed the Chapter 7 petition sua sponte, stating that "I find this case achieves no bankruptcy law objectives and has only served to delay and frustrate legitimate state court proceedings."

Based on the foregoing facts, the Delaware Supreme Court found the following violations:

Respondent knowingly made false statements of material fact or law to a tribunal by inconsistently informing the court that she represented a particular client and at other times claiming that she did not represent the client. The Delaware Supreme Court cited the Delaware Board on Professional Responsibility's ("Delaware Board") conclusion that "[i]t is hard to conjure up a lawyer's misrepresentation to the Court more flagrant than the identity of the lawyer's client in the very proceeding being adjudicated." The Court, thus, found a violation of the equivalent of New Jersey's RPC 3.3(a)(1). As to the comments contained in respondent's brief, "castigating" the trial judge in personal terms, the Court found that the statements went "beyond 'undignified or discourteous' conduct, and [were] offensive and, in a non-litigation setting, probably libelous." The court, thus, concluded that respondent's conduct violated the equivalent of New Jersey's RPC 3.5(c). Also, the Court found that the documents prepared and filed by respondent, the first and second deeds and the certificate, were in derogation of the final judgments entered by the Court of Chancery. Based on the Court of Chancery rulings, the Court found that respondent's "representations on behalf of her client in the certificate were 'utterly false'". The Delaware Supreme Court, thus, concluded that respondent's conduct violated the equivalent of New Jersey's RPC 1.2(b). The Court also found that respondent violated Delaware's Rules of Professional Conduct (Rule) 3.1, which prohibits a lawyer from bringing non-meritorious claims and contentions

before the courts (the equivalent of New Jersey's RPC 3.1). It based its findings on the order of the Court of Chancery, which described the litigation as "bitterly contested, protracted litigation" with a "torturous and complex procedural history which demonstrates that the Conference, Bishop Jackson and [respondent] have established a pattern of bringing litigation in other courts, and taking other actions intended to interfere with this Court's jurisdiction and to avoid compliance with this Court's orders." The Court further found that respondent's conduct in the litigation constituted unnecessary delay in litigation, in violation of Rule 3.2 (similar to New Jersey's RPC 3.2). The Delaware rule requires a lawyer to make reasonable efforts to expedite litigation consistent with the interest of the client. In addition, the Delaware Supreme Court found that respondent's preparation and filing of the "certificate of revival" constituted an "offer" of falsified evidence. The Court also found that filing the false certificate created a false public business record that could mislead third persons. The Court found that these charges were substantiated by the Chancery Court's order in the initial proceeding. Based on the foregoing, the Delaware Supreme Court found violations of the equivalent to our RPC 3.3(a)(4), RPC 3.4(b) and RPC 4.1(a).³

³ Rule 3.3(a)(4) proscribes a lawyer from offering evidence that the lawyer knows to be false. Rule 3.4(b) provides that a lawyer shall not falsify evidence, counsel or assist a witness to testify falsely. Finally, Rule 4.1(a) states that, in the course of representing a client, a lawyer shall not knowingly make a false statement of material fact or law to a third person (these Delaware rules correspond to New Jersey's RPC 3.3(a)(4), RPC 3.4(b) and RPC 4.1(a)).

The Delaware Supreme Court considered, as aggravating factors, that respondent had been "exceedingly intemperate" in her behavior with the courts of the State of Delaware and with opposing litigants; that she had "numerous opportunities to alter and improve her litigation behavior but refused to do so;" and that her conduct placed an "undue and unnecessary burden on the court system and opposing litigants." In mitigation, the Court considered that respondent had no ethics history; that she reasonably complied with the procedures of the Delaware Board during the course of the disciplinary proceedings; and that her conduct did not result in a complaint that her own client had been harmed. Although the Delaware Board recommended that respondent be suspended for a period of eighteen months, the Court imposed a one-year suspension starting January 1, 1999.

The OAE urged that we impose identical discipline, a one-year suspension retroactive to January 1, 1999.

* * *

Upon a de novo review of the full record, we determined 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 the Board rests for purposes of a disciplinary proceeding), we adopt the findings of the Delaware Supreme Court.

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

which directs that

[t]he 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 upon which the discipline in another jurisdiction was predicated that it clearly appears that:

- (A) the disciplinary or disability order of the foreign jurisdiction was not entered;
- (B) the disciplinary or disability order of the foreign jurisdiction does not apply to the respondent;
- (C) the disciplinary or disability order of the foreign jurisdiction does not remain in full force and effect as the result of appellate proceedings;
- (D) the procedure followed in the following disciplinary matter was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process; or
- (E) the misconduct established warrants substantially different discipline.

Nothing in the record indicates any condition that would fall within subparagraphs (A) through (E).

Respondent violated RPC 1.2(d) (counseling or assisting client in conduct the lawyer knows is illegal, criminal or fraudulent) when she prepared two deeds and the "certificate of restoration." The deeds and the certificate failed to comply with the final judgment of the Delaware Court of Chancery and with a subsequent final judgment of the Supreme Court of Delaware. More specifically, in February 1993, the Court of Chancery issued an injunction

after respondent filed the first deed. She was on notice that she was not to interfere with the Church's title, use, enjoyment or operation of their land. Despite the clear language of the injunction, respondent filed a second deed. After the second deed proved unsuccessful, respondent filed a "certificate" with the Delaware Division of Corporations, on behalf of the Bishop and the Conference. The Delaware Court of Chancery concluded that respondent's attempts to gain control of the Church's land were based on manufactured evidence, particularly the certificate. Respondent's continued attempts to gain control of the Church's land were fraudulent and illegal, in the face of the clear order of the Court of Chancery, in violation of RPC 1.2(d).

Respondent also violated RPC 1.2(d) when she filed a debtor's schedule listing fraudulent assets and claims with a federal bankruptcy court.

Respondent's filing of multiple lawsuits also violated RPC 3.1 (meritorious claims and contentions) because she filed frivolous and non-meritorious claims with the Delaware Court of Chancery and the Federal Bankruptcy Court: the second deed and the bankruptcy case. All of the pertinent issues presented in these subsequent cases had been decided during the Court of Chancery's adjudication of the validity of the first deed.

Respondent violated RPC 3.3(a)(1) with her inconsistent statements to the Delaware Court of Chancery about her representation of the Reverend Moon. She also violated RPC 3.3(a)(4) by submitting false evidence to the Federal Bankruptcy Court. Respondent prepared and filed a "revival of the certificate of incorporation" on behalf of her client. This

certificate constituted an offer of falsified evidence. The certificate was submitted to the Delaware Division of Corporations to intentionally mislead the bankruptcy court and it also had the potential to mislead third persons who may have relied on it. Thus, respondent violated RPC 3.4(b) and RPC 4.1(a)(1).

In sum, respondent prepared two deeds and a false certification, in violation of RPC 1.2(d) and RPC 3.1; made false statements to tribunals and submitted false evidence, in violation of RPC 3.3(a)(1) and (4); submitted a false debtor's schedule in a federal bankruptcy court in violation of RPC 3.4(b); and submitted a false "certificate" to the Division of Corporations, in violation of RPC 4.1(a)(1).


In matters involving similar misconduct, discipline has ranged from six-to-eighteen-month suspensions. See In re Schiff, 156 N.J. 402 (1998) (eighteen-month suspension for violations of RPC 3.3(a)(1), where attorney submitted records required by federal statute that were not "contemporaneous or accurate;" the attorney falsely swore to the court that all of her submissions were accurate in a affidavit); In re Lisa, 158 N.J. 5 (1999) (one-year suspension for violations of RPC 3.3(a)(1), RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation) and RPC 8.4(d) (conduct prejudicial to the administration of justice) where attorney failed to disclose to the court that he was not in good standing in his application to appear pro hac vice; attorney further lied to a judge when he stated that he had sent his admission papers to the clerk and claimed that he was not the same "James R. Lisa" who had been disciplined in New Jersey); and In re Forrest, 158 N.J. 428 (1999) (six-month

suspension for violation of RPC 3.3(a)(5) (failure to disclose material fact to tribunal), RPC 3.4(a) (obstructing party's access to evidence of potential evidentiary value) and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation) where, during the course of arbitration, attorney withheld fact that his client was deceased and ignored repeated requests from opposing counsel to produce deceased client for a medical examination).

Based on the foregoing, we unanimously determined to impose a prospective one-year suspension. Respondent may apply for reinstatement once she is reinstated in Delaware, or at the conclusion of the New Jersey term, whichever occurs first.

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

Dated: 7/17/08

By: 
LEE M. HYMERLING
Chair
Disciplinary Review Board

SUPREME COURT OF NEW JERSEY

**DISCIPLINARY REVIEW BOARD
VOTING RECORD**

**In the Matter of K. Kay Shearin
Docket No. DRB 99-298**

Argued: December 16, 1999

Decided: July 17, 2000

Disposition: One-year suspension

Members	Disbar	One-year Suspension	Reprimand	Admonition	Dismiss	Disqualified	Did not Participate
Hymerling		X					
Cole		X					
Boylan		X					
Brody		X					
Lolla		X					
Maudsley		X					
Peterson		X					
Schwartz		X					
Wissinger		X					
Total:		9					

Robyn M. Hill 10/27/00
Robyn M. Hill
Chief Counsel