SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 00-126

IN THE MATTER OF

RUSSELL E. PAUL,

AN ATTORNEY AT LAW

Decision

Argued: July 20, 2000

Decided: September 18, 2000

Ahmed S. Corbit, Esq., appeared on behalf of the District IV Ethics Committee.

Angelo J. Falciani, Esq., appeared on behalf of respondent, who also was present.

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

This matter was before us based upon a recommendation for discipline filed by the District IV Ethics Committee ("DEC").

Respondent was admitted to the New Jersey bar in 1966 and maintains an office for the practice of law in Woodbury, Gloucester County. The complaint alleges that respondent lied about the existence of a claim against him in an application for malpractice insurance.

On October 24, 1974 respondent received a private reprimand. Upon the dismissal of his client's appeal, respondent, rather than advise his client of the dismissal, suggested that the client obtain other counsel.

On December 31, 1987 respondent received a second private reprimand for this time allowing the statute of limitations to run in a personal injury action and misrepresenting the status of the case to the client.

On July 6, 1994 the Supreme Court imposed a reprimand for gross neglect, failure to communicate with the client and misrepresentation. In re Paul, 137 N.J. 103 (1994).

* * *

The first count of the three count complaint alleged that respondent violated RPC 8.4(c) (misrepresentations to the client) and RPC 3.3(a)(5) (knowingly making false statements to a tribunal).

The second and third counts of the complaint were dismissed prior to the hearing. They alleged certain letterhead deficiencies (RPC 7.5 and RPC 7.1) and the making of a false statement in a disciplinary matter, respectively.

Respondent admitted all factual allegations of the complaint, disputing any "allegations or inferences of knowledge of the falsity of his representations" and any allegations of unethical conduct.

In or about June 1991, the grievant, Robert C. Villare, retained respondent to file an answer and to otherwise represent him a civil litigation. Respondent did not file an answer, resulting in the entry of a default judgment against Villare, in September 1991, for $16,524.91. Thereafter, Villare filed an ethics grievance against respondent. Ultimately, in July 1994 respondent received a reprimand for gross neglect, failure to communicate and misrepresentations to the client.

Once the ethics matter was completed, Villare retained counsel, Thomas F. Halfpenny, to file a malpractice suit against respondent. By letter dated June 21, 1993, Halfpenny advised respondent that he represented Villare with regard to a malpractice claim against him. Halfpenny and respondent discussed the malpractice claim on July 15, 1993. At that time respondent informed Halfpenny that he had already notified his malpractice insurance carrier, National Union Fire Insurance Company ("National"), about the claim. That statement was untrue. The following day, Halfpenny sent a letter to respondent confirming their conversation.

Thereafter, in September 1993, Halfpenny filed a malpractice action against respondent. On October 6, 1993 the complaint was served on respondent's associate, Susan Hanson, at respondent's law office.[1]

[1]At the DEC hearing, considerable time was devoted to whether respondent knew that service of the complaint had been made on Hanson. Halfpenny pointed out that the court found service to be deficient because respondent had not been personally served.

On December 15, 1993 Villare's office manager wrote to respondent, stating as follows, in part:

> A complaint has been filed against you in the Superior Court of New Jersey ... I spoke to your secretary by phone and she stated that you were aware of the complaint. However [Halfpenny] has informed our office that you have not responded to the courts. I have left several messages, but you have failed to return our phone calls.

On January 24, 1994 Villare wrote to respondent directly concerning his failure to answer the malpractice complaint. A default judgment for $32,815.62 plus costs was entered against respondent on April 15, 1994. On April 29, 1994, Halfpenny sent a copy of the final judgment to respondent. Respondent did not reply to either of the above communications.

Respondent also became aware, in early 1994, that National intended to increase his malpractice insurance premium by some four hundred percent. His policy then lapsed on or about February 20, 1994. Eight months later, on October 21, 1994, respondent wrote to Garden State Indemnity ("GSI"), another malpractice insurance company, enclosing an application for coverage. Respondent typed the application for coverage himself, using an office typewriter. In both the application and the cover letter, respondent stated that he had never had a malpractice claim made against him, stating that "I have never had a claim."

On September 8, 1995 respondent was served with a writ of execution by Villare's

attorney. Shortly thereafter, respondent forwarded the writ to GSI, claiming that he had been recently contacted about the claim. GSI disclaimed coverage.

Respondent sought to vacate the underlying default judgment and signed an affidavit dated February 12, 1996, in which he stated the following:

> My best recollection of my first knowledge of this suit was when I received notice of post-judgment procedures.

On November 20, 1996 respondent was deposed by GSI in connection with a third-party claim filed by respondent, in which he sought a declaration of insurance coverage. When asked if he remembered receiving Halfpenny's June 21, 1993 letter, respondent replied "no." Respondent testified that he had no knowledge of Villare's malpractice claim until October 1995, when he was served with the writ of execution. Respondent further testified that he received no documents, between 1991 and 1994, that would have alerted him to Villare's claim.

Finally, in his answer to the grievance, respondent asserted that he was unaware of the Villare claim until October 1995 because he had "blocked" the existence of the malpractice claim from his mind. Respondent stated that, "the explanation I submitted for having failed to mention the claim of Dr. Villari when applying for insurance was that I it

[sic] was not on my mind in that I had probably blocked the claim of Dr. Villari . . . ."[2] In this respect, respondent filed a June 13, 2000 letter-brief, in which he argued that he suffered from a personality disorder that enabled him to "block out" certain events, such as the Villare matter. That issue is explored below.

There is another troubling aspect of this case that was not explored by the DEC. Question number fourteen of the GSI application, which respondent admitted completing himself, states as follows:

> Has any attorney listed in number 7 ever been disbarred or suspended from practice before any court or administrative agency, reprimanded or refused admission to practice?

Respondent answered "no" to that question, despite the fact that by that time he had received his third discipline, several months earlier.

Lastly, contrary to his earlier position, at the DEC hearing respondent acknowledged receipt of all of the documents related to the malpractice action, including the June 21, 1993 letter that alerted him to the existence of a malpractice claim. Those documents, including the malpractice complaint, were found in respondent's file when he turned it over to the DEC. Respondent asserted that he never reviewed the file during the pendency of the matter to determine its contents. Therefore, he claimed, he was unaware of the correspondence in the case because of his mental block and, he urged, was unaware that a malpractice complaint had been filed against him until he received the writ of execution.

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[2]The doctor's name is spelled both as Villare and Villari in the record.

* * *

The DEC found that respondent made the following misrepresentations, in violation of RPC 8.4(c):

1) Respondent lied to Halfpenny, in their July 15, 1993 telephone conversation, that he had already placed his carrier on notice of Villare's malpractice claim.

2) Respondent lied, in an affidavit, a certification to the court, his reply to the ethics grievance and his deposition testimony, that he had no notice to Villare's claim.

3) Respondent lied to GSI, in his October 1994 cover letter and application for coverage, that he was unaware of any malpractice claims against him.

The DEC dismissed the violation of RPC 3.3(a)(5) for lack of proof that respondent "knowingly" made a false statement. The DEC recommended the imposition of a three-month suspension.

* * *

Respondent has admitted essentially all of the facts in the case, including those establishing misrepresentations. Yet, he also insisted that he is not guilty of "knowing

misrepresentations" for two reasons. First, respondent claimed, he had experienced a mental block with regard to the Villare matter at some point prior to his October 1994 lies to GSI in the application for insurance. Not able to explain the existence of the complaint in his own file (although the record is unclear, presumably in the office file for the prior Villare matter), respondent stated that he did not review his file to determine if it contained evidence of a malpractice claim or, obviously, indicia of a malpractice action. Equally strange is the caveat expressed by respondent's counsel that "respondent does not stipulate to any allegations or inferences of knowledge of the falsity of his representations." As will be shown below, respondent's misrepresentations, indeed lies, were made in an effort to reduce his malpractice insurance premium.

First, it is clear that respondent received Halfpenny's June 21, 1993 letter advising him about the malpractice claim. Therefore, it is unquestionable that respondent was aware, in June 1993 at the latest, that Halfpenny intended to press a malpractice claim. The remainder of this case really stems from the fact that respondent cannot deny his awareness of that fact. Moreover, respondent admitted that he had spoken to Halfpenny on at least one occasion, July 15, 1993, and had told Halfpenny at the time that he, respondent, had already notified his insurance carrier of the claim. Not only was respondent aware of the claim, but his representation that he had contacted his carrier was untrue. Respondent also admitted that he received Halfpenny's letter of the following day, which confirmed respondent's

statement that he had already notified his carrier of the claim. Respondent's misconduct in this regard was a clear violation of RPC 8.4(c).

From July 1993 to February 1994 the malpractice litigation proceeded without respondent's input, despite several more letters from Villare requesting respondent's cooperation in the matter. At about that same time, respondent was notified by National that his malpractice premiums were being increased by about four hundred percent. Instead of paying the higher premium, respondent allowed the policy to lapse.

In October 1994 respondent "came to his senses" and applied for coverage with GSI. Respondent twice misrepresented to GSI, in his cover letter and in the application for coverage, that there were no malpractice claims pending against him at the time. Respondent's misconduct in this context also violated RPC 8.4(c).

Respondent then represented, in two separate 1995 court certifications, that he first became aware of the Villare claim in October 1995 when he was served with Villare's writ of execution. Respondent continued to misrepresent the true events of the case when questioned by counsel for GSI. In that deposition, respondent repeated his refrain that he was unaware of any claims against him until the writ of execution was served in late 1995 and that he had told the truth all along, that is, that he was previously unaware of Villare's claim against him. Respondent's misconduct in this regard amounted to further misrepresentations, in violation of RPC 8.4(c). Indeed, respondent's misconduct, lying in certifications to a court and in deposition testimony in a litigation, was in contravention of

RPC 8.4(d) (engaging in conduct prejudicial to the administration of justice) and RPC 3.3 (candor toward a tribunal) as well. Although respondent was not specifically charged with a violation of these RPCs, the facts in the complaint gave him sufficient notice of the alleged improper conduct and of the potential violation of those RPCs. Furthermore, the record developed below contains clear and convincing evidence of a violation of RPC 8.4(d) and RPC 3.3. Respondent did not object to the admission of such evidence in the record. In light of the foregoing, we amended the complaint to conform to the proofs. R. 4:9-2; In re Logan, 70 N.J. 222, 232 (1976).

Finally, although the DEC found that respondent had lied in his initial reply to the grievance, it is not clear that he did so. In his reply, respondent raised for the first time the defense that he had probably "blocked out" the Villare matter and was unaware, until the writ of execution, in late 1995, that a malpractice claim existed. Therefore, we did not make a finding of misconduct in this context.

With respect to the issue of serving the malpractice complaint, respondent's counsel argued that respondent was improperly served, that is, that Hanson was unable to accept service on respondent's behalf. However, for purposes of finding ethics violations here it does not matter that Hanson accepted service of the complaint in October 1993 or that the complaint may have immediately been placed in the Villare file without respondent's knowledge, if that in fact occurred. It matters only that respondent was already aware, in

June of that year, that Villare was pressing his malpractice claim. From that point on, respondent could not assert, without lying, that he "never had a claim."

Likewise, respondent cannot hide behind his alleged failure, prior to filing the application for insurance, to inspect his own file for evidence of a claim. It strains credulity that respondent did not review the contents of the file prior to undertaking that task, especially in light of respondent's knowledge of the claim at the time.

With respect to all of respondent's misrepresentations, the following explanation was proffered. According to respondent's counsel, respondent has the ability to completely deny the existence of certain troubling events like the Villare matter, thereby erasing them from his mind. Therefore, according to counsel, respondent was not lying or misrepresenting the facts when he repeatedly denied the existence of claims against him. Rather, according to counsel, respondent was in a complete state of denial about the actual existence of the Villare matter. To that end, respondent's counsel recently submitted a letter-brief and a June 16, 2000 letter from respondent's psychiatrist, Dr. Farrell R. Crouse, in support of respondent's position. According to Dr. Crouse, respondent suffers from a "depersonalization disorder," which allows him to conduct an absolutely normal life, "except for several episodes in his life when he became an onlooker as if he were watching a play." Dr. Crouse's report is conclusory and relied heavily on respondent's own assessment of his condition. It should be noted that respondent's problem manifested itself when respondent set out to obtain less expensive malpractice coverage and that respondent

was suddenly able to act on the Villare matter when the writ of execution was served. Dr. Crouse did not shed light on this inconsistency. In any event, we must decide what weight, if any, should be given to his diagnosis. On that issue, the Court has recognized that there may be circumstances where an attorney's loss of comprehension is so great "that it would excuse or mitigate conduct that would otherwise be knowing and purposeful." However, there must be psychiatric evidence that respondent was "out of touch with reality or unable to appreciate the ethical quality of his acts." In re Bock, 128 N.J. 270, 273 (1992) (citing a long line of compulsion cases). There is no such evidence in this case, leaving little to be gathered, in respondent's favor, from the report.[3]

As to respondent's answer to question fourteen on the October 1995 GSI application, he clearly lied when he denied having ever been disciplined. Because the complaint did not charge any violations in this context, we did not find a violation in this regard. However, we considered respondent's misrepresentation as an aggravating factor, adding strength to our finding that he displays a troubling tendency to tell lies.

Respondent urges the Board to consider in mitigation that, during the relevant time period, he experienced family problems, including his wife's battle with breast cancer and his college-aged daughter's bouts with unexplained seizures. In addition, respondent noted that, over the years since his admission to the bar, he occupied numerous positions of trust as Gloucester County Counsel, Assistant Gloucester County Attorney, Assistant Gloucester

[3]On a procedural note, we allowed the report to be included in the record as the DEC had no objection to its inclusion.

County Prosecutor and, at the time of the hearing, as the prosecutor for several municipalities. If anything, however, by virtue of his positions of public trust, respondent must be held to a higher standard of conduct reserved for public officials. "Attorneys who hold public office are invested with a public trust and are thereby more visible to the public. Such attorneys are held to the highest of standards." In re Magid, 139 N.J. 449, 455 (1995).

Discipline in cases involving lying to a court varies greatly, ranging from an admonition to a three-year suspension. See In re Lewis, 138 N.J. 33 (1994) (where the attorney received an admonition for attempting to deceive a court by introducing into evidence a document falsely showing that a heating problem in an apartment of which he was the owner/landlord had been corrected prior to the issuance of a summons); In re Mazeau, 122 N.J. 244 (1991) (public reprimand for making a false statement of material fact in a brief submitted to a trial judge); In re Johnson, 102 N.J. 504 (1986) (three-month suspension for misrepresenting to a trial judge that the attorney's associate was ill in order to obtain an adjournment of a trial); In re Kernan, 118 N.J. 361 (1990) (three-month suspension for filing a false certification in the attorney's own matrimonial matter); In re Labendz, 95 N.J. 273 (1984) (one-year suspension imposed on attorney who submitted a false mortgage application to a bank to obtain a higher mortgage loan for his clients); and In re Kornreich, 149 N.J. 346 (1997) (three-year suspension for falsely accusing babysitter of being involved in an automobile accident, which actually involved the attorney).

Here, respondent made oral misrepresentations to his adversary and written misrepresentations in (1) a cover letter for insurance; (2) an application for insurance; (3) a deposition and (4) in several certifications to a court. In addition, there are several aggravating factors to consider. First, in this matter respondent exhibited a pattern of misrepresentation to a wide array of people. Also, respondent was motivated by self-gain, in that he was attempting to obtain less costly insurance.[4] Finally, respondent's ethics history includes two private reprimands and a reprimand. In each of those three prior ethics matters, the element of misrepresentation was present. Respondent has, thus, shown an alarming propensity for some thirteen years to make misrepresentations to anyone or any entity, including the courts. Under the circumstances, by a five member majority, we suspended respondent for three months. Three members would have imposed a reprimand. A fourth member would have imposed a six-month suspension. We also required respondent to reimburse the Disciplinary Oversight Committee for administrative expenses.

Dated: 9/18/00

LEE M. HYMERLING
Chair
Disciplinary Review Board

[4] Respondent's counsel argued, in his brief to the Board, that there was no benefit to be derived by respondent because respondent's failure to disclose the information would result in a failure to write the policy. However, that argument presumes that the insurance company would necessarily find out about the matter.

SUPREME COURT OF NEW JERSEY

DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Russell E. Paul
Docket No. DRB 00-126

Argued: **July 20, 2000**

Decided: **September 18, 2000**

Disposition: **Three-month suspension**

Members	Disbar	Three-month Suspension	Reprimand	Six-month Suspension	Dismiss	Disqualified	Did not Participate
Hymerling		X					
Peterson		X					
Boylan			X				
Brody		X					
Lolla		X					
Maudsley		X					
O'Shaughnessy			X				
Schwartz				X			
Wissinger			X				
Total:		5	3	1			

By Robyn M. Hill 11/15/00
Robyn M. Hill
Chief Counsel