

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 01-073

IN THE MATTER OF :
: :
DAVID M. GORENBERG :
: :
AN ATTORNEY AT LAW :
: :

Decision

Argued: May 17, 2001

Decided:

Nitza I. Blasini 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 based on a stipulation of facts between respondent and the Office of Attorney Ethics ("OAE"), arising out of respondent's misrepresentation to a tribunal in one matter and his mishandling of a second matter. Respondent admitted violations of RPC 3.3(a)(1) (lack of candor toward a tribunal), RPC 3.4(b) (fairness to opposing counsel), RPC 1.3 (lack of diligence), RPC 1.4 (failure to communicate) and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation).

Respondent was admitted to the New Jersey bar in 1991. He has no history of discipline. During the time relevant to this matter, he maintained an office for the practice

of law in Moorestown, Burlington County. According to the stipulation, "[a]t the present time, respondent is not practicing law."¹

On or about March 3, 1999 the District IIIB Ethics Committee ("DEC") received a grievance, alleging that respondent had made a misrepresentation to a court regarding funds that were to be held in trust. By letter dated March 12, 1999 the grievance was amended to include an allegation that respondent had encouraged his client in a matrimonial matter, Michele Spratt (the grievant's estranged wife), to commit perjury. Specifically, the grievant alleged that respondent "teaches/trains/preps his clients to lie and fabricate ridiculous accusations in Court to obtain a Final Restraining Order."

Initially, the DEC investigated this matter. Because this matter concerned financial improprieties, including a potential knowing misappropriation of client trust funds, the matter was transferred to the OAE. The January 10, 2000 audit of respondent's attorney books and records by the OAE did not reveal any misappropriation of client trust funds. The OAE's review of the matter did disclose, however, that respondent had made a misrepresentation to a court. Respondent admitted that, on October 17, 1997, he misrepresented to the court that he was holding \$10,000 in his trust account when, in fact, he was not. Respondent adamantly denied, however, that he had advised and encouraged his clients to lie in order to obtain final restraining orders against their spouses. Indeed, the

¹ While respondent has no history of discipline, as of this date, an order for his temporary suspension for failure to comply with a fee arbitration determination is pending with the Court. See Order dated November 14, 2001.

OAE found no "overt evidence" to substantiate the grievant's claim.

Respondent admitted that he had violated RPC 3.3(a)(1) and RPC 3.4(b), in that his misrepresentation misled not only the court, but opposing counsel as well.

* * *

On or about July 24, 2000, the DEC secretary forwarded to the OAE a second grievance filed against respondent, this one by Linda R. Deal,² whom respondent represented in a matrimonial matter. Respondent failed to keep Deal informed about the status of the matter and failed to file a complaint in her behalf, despite his representation to her that he had filed the complaint.

Respondent admitted that he had violated RPC 1.3, RPC 1.4 and RPC 8.4(c).

Respondent submitted the following in mitigation:

1. Respondent has a history of Major Depressive Disorder. Respondent's symptoms began in approximately January 1998 and he began outpatient therapy at that time.

2. In August, 1998 Respondent was hospitalized and upon his release continued outpatient treatment until July 1999. Due to the severity of his symptoms, Respondent was hospitalized again in August 1999. His course of treatment has continued since his last hospitalization. He is currently taking 40 mg Prozac; 10 mg Ritalin 2x per day; .5 mg Klonopin as needed; and 50 mg Deseril per day.

3. Respondent's ability to make sound decisions and exercise good judgment was adversely affected by his illness. His reaction to stress became

²Deal had previously filed a grievance against respondent in February 1999. The then-secretary of the DEC declined to docket the matter, because it raised both ethics and fee issues. On the DEC secretary's advice, Deal contacted the district fee arbitration committee. In July 2000 respondent forwarded a check for \$1,209.27 to Deal, as directed by the fee committee.

fear and avoidance. His daily functioning was impaired by 'emotional paralysis'.

4. Respondent was a solo practitioner who did not enjoy the supervision and guidance of a boss and/or partner during this time. Since this incident, Respondent has closed his practice with the assistance of the County Bar Association's Lawyers Assistance Committee. He continues treatment with a therapist and is employed in a law related field. Respondent has the support of his wife and family and is making every effort to turn his life around.

[Stipulation at 5]

The OAE recommended that respondent receive a reprimand, citing several cases in support of its recommendation: In re Mazeau, 122 N.J. 244 (1991) (reprimand for making a false statement of material fact in a brief submitted to a trial judge); In re Marlowe, N.J. (1990) (reprimand imposed after the attorney misrepresented to a court that all counsel involved had consented to an adjournment of the matter); In re Wildstein, 138 N.J. 48 (1994) (reprimand when the attorney failed to communicate with clients in three matters and displayed gross neglect and a lack of diligence in two of those matters); In re Vaughn, 123 N.J. 576 (1991) (reprimand for failure to keep clients informed of the status of their cases in four matters, failure to act with diligence in three of the matters, a pattern of neglect in those matters, failure to file an accounting of funds in a matter and failure to cooperate with disciplinary authorities). See also In re Kantor, 165 N.J. 572 (2000) (reprimand for misrepresentation, lack of candor to a tribunal and offering false evidence.)

* * *

Upon a de novo review of the record, we are satisfied that there is clear and convincing evidence that respondent violated RPC 1.3, RPC 1.4, RPC 3.3(a)(1), RPC 3.4(b) and RPC 8.4(c).

Discipline in cases involving misrepresentation to a court varies greatly, ranging from an admonition to a three-year suspension. See In re Lewis, 138 N.J. 33 (1994) (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 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 an 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 that actually involved the attorney).

Recently, in In re Paul, 167 N.J. 6 (2001), a three-month suspension resulted for the attorney's misrepresentation, lack of candor to a tribunal and conduct prejudicial to the administration of justice. Paul 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) several certifications to a court. Aggravating factors included the pattern of misrepresentation to a wide array of people, his self-benefit motives and his history of discipline, which included two private reprimands and a reprimand and which all involved misrepresentation.

By way of mitigation, the stipulation stated that respondent suffers from a serious depressive disorder. Although the record is devoid of any documentation of respondent's illness, the OAE received a letter from respondent's therapist, stating that respondent suffered from depression.³ The OAE must have been satisfied that respondent was, in fact, suffering from depression, since it stipulated his condition. We noted, however, that, according to the stipulation, respondent's symptoms began in approximately January 1998. His misrepresentation to the court was in October 1997, several months before. It is possible, however, that even in October 1997, respondent suffered from some form of depression. Under these circumstances, we considered respondent's depression as mitigating his lack of diligence and failure to communicate in the Deal matter. It does not serve, however, to mitigate his misrepresentation to Deal and his misrepresentation to the court in Spratt.

In determining the appropriate level of discipline we considered the cases cited by the OAE, as well as Paul. Respondent's infractions do not rise to the level in Paul. Respondent

³At oral argument before us, the presenter clarified that she had received a letter from respondent's therapist, stating that he suffered from depression.

has no prior disciplinary history and he was not motivated by self-benefit. Hence, we unanimously determined that respondent's unethical conduct merits a reprimand.

One member did not participate.

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

By:

A handwritten signature in black ink, appearing to read 'Rocky L. Peterson', written over a horizontal line.

ROCKY L. PETERSON
Chair
Disciplinary Review Board

**SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD**

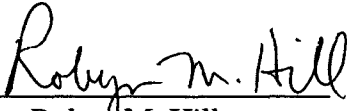
In the Matter of David M. Gorenberg
Docket No. DRB 01-073

Argued: May 17, 2001

Decided: November 19, 2001

Disposition: Reprimand

<i>Members</i>	<i>Disbar</i>	<i>Suspension</i>	<i>Reprimand</i>	<i>Admonition</i>	<i>Dismiss</i>	<i>Disqualified</i>	<i>Did not participate</i>
<i>Peterson</i>			X				
<i>Maudsley</i>			X				
<i>Boylan</i>							X
<i>Brody</i>			X				
<i>Lolla</i>			X				
<i>O'Shaughnessy</i>			X				
<i>Pashman</i>			X				
<i>Schwartz</i>			X				
<i>Wissinger</i>			X				
Total:			8				1


 Robyn M. Hill
 Chief Counsel

11/21/01