

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 03-043

IN THE MATTER OF :
 :
KENNETH GJURICH :
 :
AN ATTORNEY AT LAW :
 :

Decision

Argued: April 17, 2003

Decided: June 5, 2003

John McGill, III 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 disciplinary stipulation between respondent and the Office of Attorney Ethics (“OAE”). Respondent stipulated that he violated RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation) when he collected unemployment benefits from the State of New Jersey while employed as an attorney in a Pennsylvania law firm.

Respondent was admitted to the New Jersey bar in 1985 and to the Pennsylvania bar in 1984. He has no history of discipline.

From August 1994 to January 1997 respondent was employed in a variety of managerial positions, including as in-house counsel for OAI Banc Services Corp. ("OAI"), a mortgage outsource firm located in Marlton, New Jersey. In January 1997 he was vice-president of production for OAI and was not engaged in the private practice of law. In late January 1997 OAI abruptly went into bankruptcy and dissolved with little or no warning to its employees. On or about February 16, 1997 respondent filed a claim for unemployment benefits with the State of New Jersey, Department of Labor, Division of Unemployment and Disability Insurance. Respondent collected and cashed a total of fourteen unemployment benefit checks for the weeks ending February 22 through August 2, 1997, at the rate of \$374 per week, for a total of \$8,602.

While respondent was collecting unemployment benefits from the Department of Labor, he was employed full-time as an associate with the law firm of Barrow & Associates ("Barrow"), located in Pennsylvania. From March 1 through August 1, 1997 respondent received weekly earnings at Barrow, consisting of salary and incentive payments that totaled \$16,750.

In early August 1997 the Department of Labor notified respondent that it had discovered his conduct. By letter dated August 11, 1997 to the Department of Labor, respondent admitted that he had collected unemployment benefits while he was drawing a salary as an attorney for Barrow. Thereafter, respondent and the Department of Labor entered into an arrangement for the repayment of the unemployment benefits. When respondent failed to make the scheduled payments, the Department of Labor referred the case to the New Jersey Attorney General's office for possible criminal charges.

On June 14, 2001 a New Jersey grand jury returned a two-count indictment charging respondent with third-degree theft by deception, in violation of N.J.S.A. 2C:20-4, and fourth-degree unsworn falsification to authorities, in violation of N.J.S.A. 2C:28-3a. By letter dated July 11, 2001, the Attorney General's office notified the OAE of the indictment returned against respondent. On February 14, 2002 the Attorney General's office advised the OAE that respondent had been admitted to the Mercer County pre-trial intervention program for a period of three years, on condition that he pay \$10,958.56 in restitution to the Department of Labor, pay a \$7,500 criminal fine, perform fifty hours of community service and pay various court-imposed assessments.

On May 23, 2002 the OAE notified respondent that a grievance had been docketed against him, alleging that he had improperly collected unemployment benefits. By letter dated June 1, 2002, respondent replied to the grievance and explained the reasons for his misconduct. Essentially, respondent stated that his salary at Barrow was less than one-fourth of what he had been earning and that he continued to collect unemployment benefits because of financial pressures.

Respondent stipulated that, by collecting unemployment benefits while he was employed at Barrow, he violated RPC 8.4(c).

The stipulation noted respondent's cooperation with the disciplinary system throughout the course of the proceeding. The OAE recommended that respondent receive a reprimand.

* * *

Following a de novo review of the record, we found that the stipulated facts support a finding that respondent's conduct was unethical.

In recommending a reprimand, the OAE relied on In re Ford, 152 N.J. 465 (1998). Ford falsely certified at least ten times to the Division of Unemployment and Disability Insurance that he was entitled to unemployment benefits. He failed to fully disclose his newly established law practice. In the face of his successful business, he continued to falsely assert that he was unemployed. Ford received a reprimand.

More severe discipline was imposed in In re Kernan, 118 N.J. 361 (1990), and In re Kerrigan, 146 N.J. 557 (1996). In Kernan, the attorney received a three-month suspension for failing to inform the court, in his own matrimonial matter, that he had transferred property to his mother for no consideration. The Supreme Court found that Kernan "blatantly attempted to defraud both the court and his wife." Moreover, the Court concluded that Kernan had knowingly made a false certification, when he failed to amend his list of assets before the court. Kernan had a prior private reprimand.

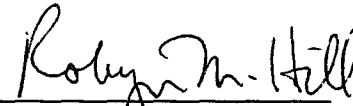
In Kerrigan, the attorney defrauded an insurance company when, in concert with a doctor, he submitted a false statement claiming that he had received thirty-five treatments from the doctor, following an automobile accident. The insurance company paid Kerrigan \$5,500 and the doctor \$3,043. Kerrigan pleaded guilty to one count of mail fraud, was sentenced to three years' probation and was ordered to pay a fine. He received a retroactive eighteen-month suspension. In both Kernan and Kerrigan, the misconduct was for the benefit of the attorney.

Here, we were mindful of the seriousness of respondent's conduct. His deceit each time he received a check for unemployment benefits and his subsequent failure to repay the funds, as agreed, were troubling. In refraining from imposing a term of suspension, we considered that he fully cooperated with the disciplinary authorities in the resolution of this matter and that he practiced law for twelve years without any incidents, prior to these unfortunate events. Respondent is hereby forewarned, however, that any future unethical conduct shall not be viewed with such indulgence. For these reasons only, we determined that a reprimand is adequate discipline for this respondent.

Two members did not participate.

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

Disciplinary Review Board
Mary J. Maudsley, Chair

By: 
Robyn M. Hill
Chief Counsel

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

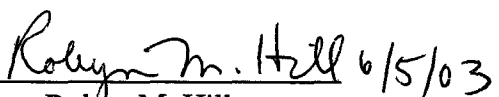
In the Matter of Kenneth Gjurich
Docket No. DRB 03-043

Argued: April 17, 2003

Decided: June 5, 2003

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>Maudsley</i> | | | X | | | | |
| <i>O'Shaughnessy</i> | | | X | | | | |
| <i>Boylan</i> | | | | | | | X |
| <i>Holmes</i> | | | X | | | | |
| <i>Lolla</i> | | | X | | | | |
| <i>Pashman</i> | | | X | | | | |
| <i>Schwartz</i> | | | | | | | X |
| <i>Stanton</i> | | | X | | | | |
| <i>Wissinger</i> | | | X | | | | |
| Total: | | | 7 | | | | 2 |


 Robyn M. Hill
 Chief Counsel