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SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 04-256
District Docket No. VII-03-034E

IN THE MATTER OF

KATHLEEN SCOTT CHASAR

AN ATTORNEY AT LAW

Decision

Argued: October 21, 2004

Decided: November 30, 2004

Samuel M. Gaylord appeared on behalf of the District VII Ethics Committee.

Respondent appeared pro se.

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

This matter was before us on a recommendation for discipline filed by the District VII Ethics Committee ("DEC"). The complaint charged respondent with violating RPC 3.3(a) (candor to a tribunal), RPC 4.1(a) (false statement of material fact to a

third person), and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation). At the ethics hearing, the presenter contended that the charged violations of RPC 3.3(a) included RPC 3.3(a)(1) (false statement of material fact to a tribunal) and RPC 3.3(a)(4) (offering evidence that the attorney knows to be false).

Respondent was admitted to the New Jersey bar in 1996. She has no disciplinary history.

The facts in this matter are not in dispute. In January 1999, respondent filed a divorce complaint on her own behalf. One of the issues involved in the divorce was the value of respondent's law practice. Respondent's husband alleged that respondent had received legal fees in cash from clients and had paid her staff in cash. In reply to a cross-motion filed by her husband, respondent submitted to the court a certification dated June 20, 1999, in which she stated that "[d]efendant's allegations re cash payments of my clients and employee's [sic] is absurd . . . Everything is on the books." In addition, respondent submitted a certification dated February 20, 1999, signed by her secretary, stating that:

> I agreed to come in and lend a hand by answering phones, copying, etc. I was not paid in "cash, under the table". I enjoyed working with Kathleen at Lewis and Wood and I just wanted to help out. In September,

1998 . . . I became a part-time employee for Chasar Law Office.

Both certifications contained false information. Respondent admitted that she had paid her secretary in cash for two or three months in 1998 to avoid taxes, Social Security payments, and other withholdings. Respondent submitted two other certifications by her secretary, containing contradictory information. In a February 2, 1999 certification, respondent's secretary asserted that she had worked for respondent since September 1998. However, in an August 28, 2001 certification, the secretary claimed that she had worked for respondent since June 1998.

The secretary testified in respondent's divorce trial.[1] On cross-examination, she admitted that she received cash payments from respondent before September 1998 and unemployment benefits in July and August 1998. The secretary also acknowledged that she had lied in the certifications because she did not want the court to learn that she was employed at the same time that she was receiving unemployment benefits. According to the secretary, respondent asked her to submit certifications in the divorce case. The secretary admitted that the denial of cash payments

[1] The secretary failed to appear at the ethics hearing, despite the fact that she was under subpoena to testify. According to the presenter, the secretary was concerned about potential criminal prosecution.

contained in her certification was a "boldfaced lie to the Court."

For her part, respondent contended, in mitigation, that the divorce litigation was contentious, pointing to the matrimonial judge's observation that her husband had filed thirty motions and that he was "extremely difficult, argumentative, and generally obnoxious on many occasions in his conduct toward the plaintiff, court personnel, and even the Court." Respondent further asserted that, on June 8, 1999, she underwent surgery for a ruptured disk in her neck, after which she was required to wear a "hard collar" for six weeks and was prescribed various steroids, painkilling medication, and sleeping pills. Although respondent submitted documentation about the operation, she did not identify the specific medications that she was prescribed. Respondent further asserted that, in April 1999, after her husband denied her visitation with the parties' two children, she filed a motion that was not heard until July, resulting in no contact with her children for three months.

Respondent also claimed that either her boyfriend or her secretary helped draft her June 20, 1999 certification because she was recovering from surgery and that the certification contained terminology that she would not have used.

Respondent admitted that, although at the time, she actually was paying her secretary in cash, her June 20, 1999 certification was intended to mislead the court into believing that her husband's allegations of cash payments to her secretary were absurd.

The matrimonial judge referred this matter to the Office of Attorney Ethics, stating in the divorce decision that respondent's husband's argument that respondent played "fast and loose with her records" was a fair charge, that the judge had serious concerns about respondent's potential ethics violations, and that respondent had submitted a false certification by both herself and her secretary, during pretrial proceedings.

The DEC found that respondent violated RPC 3.3(a)(1) and (4) and RPC 8.4(c). The DEC did not find clear and convincing evidence that respondent violated RPC 4.1(a). The DEC recommended a sixty-day suspension.

Following a de novo review of the record, we are satisfied that the DEC's finding that respondent's conduct was unethical was supported by clear and convincing evidence.

Respondent admitted that she filed with the court a false certification in her divorce case. Although, in the certification, respondent denied paying her secretary in cash,

for several months in 1998 she did pay her secretary in cash. Not only did respondent submit a false certification, but she also filed a false certification by her secretary, in which her secretary similarly denied that she was receiving cash payments.

We do not find that respondent's arguments in mitigation are persuasive. Many, if not most, divorce cases are contentious. Even if respondent's case was particularly acrimonious (and it probably was), misrepresentations to the court are not justified. In addition, although respondent tried to disclaim responsibility for the contents of her certification by arguing that she was taking medication at the time, she did not disclose the specific drugs that were prescribed. She also claimed that others helped her draft the certification, asserting that it contained terms that she ordinarily did not use. Respondent, however, conceded that her intent in filing the certification was to mislead the court into believing that her husband's allegations of cash payments to employees were unfounded.

Respondent compounded her misconduct by not only submitting a false certification, but also by encouraging her secretary to engage in similar wrongdoing and exposing her to potential charges. Indeed, the secretary allegedly did not appear at the ethics hearing out of concern for criminal prosecution.

Respondent's submission of false certifications violated RPC 3.3(a)(1), RPC 3.3(a)(4), RPC 4.1(a), and RPC 8.4(c). Although the DEC did not find a violation of RPC 4.1(a), we find that respondent's submission of false certifications amounted to making false statements of material fact to a third person, the judge.

Discipline for attorneys guilty of similar violations has ranged from an admonition to a suspension. See In the Matter of Robin Kay Lord, DRB 01-250 (September 24, 2001) (admonition where attorney failed to reveal her client's real name to a municipal court judge when her client appeared in court using an alias, thus resulting in a lower sentence because the court was not aware of the client's significant history of motor vehicle infractions; in mitigation, the attorney disclosed her client's real name to the municipal court the day after the court appearance, whereupon the sentence was vacated); In re Mazeau, 122 N.J. 244 (1991) (attorney reprimanded for failing to disclose to a court his representation of a client in a prior lawsuit, where that representation would have been a factor in the court's ruling on the attorney's motion to file a late notice of tort claim); In re Whitmore, 117 N.J. 472 (1990) (reprimand where a municipal prosecutor failed to disclose to the court that a

police officer whose testimony was critical to the prosecution of a drunk-driving case intentionally left the courtroom before the case was called, resulting in the dismissal of the charge); In re D'Arienzo, 157 N.J. 32 (1999) (three-month suspension where the attorney made a series of misrepresentations to a municipal court judge to explain his repeated tardiness and failure to appear at hearings; we noted that, if not for mitigating factors, the discipline would have been much harsher); In re Mark, 132 N.J. 268 (1993) (three-month suspension where the attorney misrepresented to the court that his adversary had been supplied with an expert's report and then created another report when he could not find the original; in mitigation, the Court considered that the attorney was not aware that his statement was untrue and that he was under considerable stress from assuming the caseload of three attorneys who had recently left the firm.); In re Kernan, 118 N.J. 361 (1990) (attorney received a three-month suspension for failure to inform the court, in his own matrimonial matter, that he had transferred property to his mother for no consideration, and for failure to amend his certification listing his assets; the attorney had a prior private reprimand); In re Forrest, 158 N.J. 429 (1999) (six-month suspension for attorney who, in order to obtain a personal injury

settlement, did not disclose to his adversary, an arbitrator, and the court that his client had died); In re Telson, 138 N.J. 47 (1994) (attorney suspended for six months after he concealed a judge's docket entry dismissing his client's divorce complaint, obtained a divorce judgment from another judge without disclosing that the first judge had denied the request, and denied his conduct to a third judge, only to admit to this judge one week later that he had lied because he was scared); In re Cillo, 155 N.J. 599 (1998) (one-year suspension where, after misrepresenting to a judge that a case had been settled and that no other attorney would be appearing for a conference, the attorney obtained a judge's signature on an order dismissing the action and disbursing all escrow funds to his client; the attorney knew that at least one other lawyer would be appearing at the conference and that a trust agreement required that at least $500,000 of the escrow funds remain in reserve); In re Kornreich, 149 N.J. 346 (1997) (three-year suspension where the attorney, who had been in an automobile accident, misrepresented to the police, her lawyer, and a municipal court judge that her babysitter had been operating her vehicle and presented false evidence in an attempt to falsely accuse another of her own wrongdoing; two members of the Court voted for disbarment).

Respondent's misconduct is more akin to that of the attorney in Kernan, who failed to inform the court, in his own matrimonial matter, that he had transferred property to his mother and failed to amend his certification containing a list of his assets. Here, in addition to filing her own false certification, respondent induced her secretary to submit a false certification. In our view, this combination of ethics offenses requires the imposition of a suspension, despite respondent's lack of a prior disciplinary record. Four members, thus, determine that a three-month suspension is the appropriate sanction for respondent's misconduct. Two members would impose a censure. Vice-Chair William J. O'Shaughnessy, Esq. and Members Matthew P. Boylan, Esq. and Barbara F. Schwartz did not participate.

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

Disciplinary Review Board
Mary J. Maudsley, Chair

By: Julianne K. DeCore
Julianne K. DeCore
Chief Counsel

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DISCIPLINARY REVIEW BOARD
VOTING RECORD

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Disposition: Three-month suspension

Members	Three-month Suspension	Reprimand	Censure	Disqualified	Did not participate
Maudsley	X				
O'Shaughnessy					X
Boylan					X
Holmes			X		
Lolla	X				
Pashman			X		
Schwartz					X
Stanton	X				
Wissinger	X				
Total:	4		2		3

Julianne K. DeCore
Chief Counsel