

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 01-055

IN THE MATTER OF
COLLEEN MARY COMERFORD
AN ATTORNEY AT LAW

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Decision

Argued: March 15, 2001

Decided: August 6, 2001

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

Respondent failed to appear for oral argument, despite proper notice.

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"), following respondent's resignation (equivalent to disbarment by consent) in Pennsylvania for her conviction of forgery and tampering with records.¹

¹ In Pennsylvania, disbarment is the equivalent of a five-year suspension.

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Respondent was admitted to the New Jersey bar in 1988. She has no history of discipline. She failed to notify the OAE of her Pennsylvania disbarment, as required under R.1:20-14(a)(1). The OAE learned of this matter when reviewing a compilation of Pennsylvania disciplinary decisions.²

In respondent's statement of resignation from the Pennsylvania bar, she admitted that she could not successfully defend herself against the charges resulting from her October 22, 1997 conviction in the Court of Common Pleas, Philadelphia County Criminal Division, of five counts of forgery, in violation of 18 Pa. C.S.A. 4101(a)(2)³, and five counts of tampering with records, in violation of 18 Pa C.S.A. 41014(a).⁴

The Pennsylvania disciplinary system found that respondent violated R.203(b)(1) (it shall be grounds for discipline to be convicted of a crime which may result in suspension);

² The New Jersey Lawyers' Fund for Client Protection records indicate that respondent listed herself as retired from the practice of law in New Jersey since September 15, 1993.

³ 18 PA C.S.A. 4101(a)(2) provides as follows:

A person is guilty of forgery if, with intent to defraud or injure anyone, or with knowledge that he is facilitating a fraud or injury to be perpetrated by anyone, the actor makes, completes, executes, authenticates, issues or transfers any writing so that it purports to be the act of another who did not authorize that act, or to have been executed at a time or place or in a numbered sequence other than was in fact the case, or to be a copy of an original when no such original existed.

⁴ 18 PA C.S.A. 4104(a) provides as follows:

A person is guilty of tampering of records if, knowing that he has no privilege to do so, he falsifies, destroys, removes or conceals any writing or record, or distinguishing mark or brand or any other identification with intent to deceive or injure anyone or to conceal any wrongdoing.

RPC 8.4(b) (committing a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects); RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation) and RPC 8.4(d) (conduct prejudicial to the administration of justice).

Respondent's disbarment in Pennsylvania was based on facts contained in a decision of the Appellate Division of the Superior Court of Pennsylvania:

During October 1991, the defendant, Colleen Comerford, was a tenant at the Ben Franklin House apartment complex located at 8th & Chestnut Streets in Philadelphia. On or about that time, she was approached by a building manager, Susan Deib and informed that her rent of \$595.00 per month was seriously delinquent. It was apparently customary for Ben Franklin to credit tenants['] accounts, if they produced canceled checks showing payment of delinquent rent, pending other verification. [Citation omitted].

Pursuant to a conversation with 'Deib', the defendant agreed to produce cancelled checks. Shortly after their conversation, copies of purported cancelled checks bearing the defendant['s] name were left in the management office. Initially the defendant's account was credited until another manager, Bart Caprario, noticed that the bank[']s encoding check number varied from those on the face of the checks. [Citation omitted]. In an effort to clear up the problem, the manager requested that the defendant produce original checks or statements directly from the bank. She was mailed a release to permit the rental office to obtain these documents from the bank. [Citation omitted]. The defendant never signed the release; however, she did produce a second set of checks on which the check numbers and encoding numbers matched.

The Commonwealth produced evidence at trial that established that the second set of checks were forgery [sic] created by cutting and pasting actual checks for small amounts with blank

unused checks to create a photocopy which represented payments of amounts equal to the defendant[']s rent and electricity charges. The evidence also established that these forgeries never pass[ed] through any bank. [Citation omitted].

* * *

At trial, the Commonwealth presented the testimony of Ms. Deib, who stated that shortly after she had discussed the arrearages with Comerford, photocopies of four canceled checks, purporting to pay rent to Ben Franklin House, appeared on her desk. A fifth check for rent for February of 1992 was subsequently submitted. When Mr. Caprario discovered that these five checks contained no encoded amount and that the encoded number at the bottom of each check did not match the sequential number, he called Comerford and asked her for the original checks or copies from the bank. When some time passed and Comerford failed to produce the checks, Mr. Caprario wrote Comerford a letter, again requesting the statements to support her contention that she had paid. Comerford then represented that photocopies of her checks showed her payments to Ben Franklin House. The encoded number now matched the sequential number on each check. However, none of the amounts reflected on the checks appeared on any Ben Franklin House deposit slip. Comerford's bank was Provident Bank. The bank's representative testified that the checks were not Provident Bank's records.

The trial judge gave Comerford the 'benefit of the doubt' as to the checks that comprised the first set because Ms. Deib failed to identify who provided her with those checks. Thus, the trial judge acquitted Comerford of forgery and tampering with regard to the first set of checks. Comerford personally delivered the checks that comprised the second set and represented that they were proof that she had paid her rent. The trial judge concluded that, since this latter set of checks had never been processed and only Comerford had anything to gain from their creation, the checks were evidence of her guilt on the charges of forgery and tampering.

Based on the foregoing, respondent tendered her resignation from the practice of law in Pennsylvania.

The OAE urged the imposition of a three-year suspension.

* * *

Upon a de novo review of the 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 adopted the findings of the Appellate Division of the Superior Court of Pennsylvania and found that respondent's conduct violated RPC 8.4(b), RPC 8.4(c) and RPC 8.4(d).

Reciprocal disciplinary proceedings in New Jersey are governed by R.1:20-14(a)(4), which states as follows:

The Board shall recommend 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 foreign 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.

A review of the record reveals that subparagraph (E) applies. Misconduct of this sort, which included forgery and tampering with records, has been met with a term of suspension in New Jersey. See In re Chianese, 157 N.J. 527 (1999) (three-year suspension where attorney was convicted of perjury, theft by deception and forgery by submitting a forged document in a civil proceeding that the attorney instituted to collect the brokerage fee); In re Lunn, 118 N.J. 163 (1990) (three-year suspension where attorney, in the course of litigation on his own behalf, presented a statement which purported to be from his wife, who had died; the attorney had prepared and signed the statement; during depositions, the attorney affirmed the authenticity of his wife's statement at least five times); and In re Kushner, 101 N.J. 397 (1986) (three-year suspension where attorney knowingly made a false certification in court to avoid liability on a promissory note he signed; attorney entered a guilty plea to a charge of false swearing, N.J.S.A. 2C:28-2(a)).

Here, respondent's misconduct was serious. It included five counts of forgery and five counts of tampering with records. An attorney who has been disbarred in Pennsylvania, however, may seek reinstatement five years from the effective date of disbarment. See

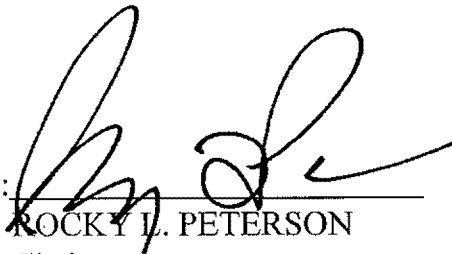
P.R.D.E. Rule 218(b). As the OAE noted, respondent's misconduct does not require a five-year suspension, which would be equivalent to the Pennsylvania disbarment. Based on the foregoing, seven members determined to impose a three-year suspension. Two members believed that respondent's premeditated actions reveal such a deficiency of character that disbarment is required.

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

Dated:

8/6/01

By:



ROCKY L. PETERSON
Chair
Disciplinary Review Board

SUPREME COURT OF NEW JERSEY

**DISCIPLINARY REVIEW BOARD
VOTING RECORD**

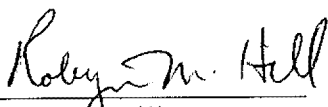
**In the Matter of Colleen Mary Comerford
Docket No. DRB 01-055**

Argued: March 15, 2001

Decided: August 6, 2001

Disposition: Three-year suspension

| Members | Disbar | Three-year Suspension | Reprimand | Admonition | 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: | 2 | 7 | | | | | |


Robyn M. Hill
Chief Counsel