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SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 99-082

IN THE MATTER OF

CHARLES E. MEADEN

AN ATTORNEY AT LAW

Decision

Argued: May 13, 1999 and October 14, 1999

Decided: April 12, 2000

Lee A.Gronikowski appeared on behalf of the Office of Attorney Ethics.

Anthony P. Ambrosio appeared on behalf of respondent on May13, 1999.

Linda Wong appeared on behalf of respondent on October 14, 1999.

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

This matter arises from a recommendation for discipline filed by the District XIII Ethics Committee ("DEC"). The original complaint filed by the Office of Attorney Ethics

("OAE") charged respondent with committing a criminal act that reflects adversely on his honesty, trustworthiness or fitness as a lawyer, in violation of *RPC* 8.4(b), engaging in conduct involving dishonesty, fraud, deceit or misrepresentation, in violation of *RPC* 8.4(c) (count one), and failing to inform the OAE of the criminal charges against him, as required by *R.* 1:20-13(a)(1) (count two). After the hearing in this matter, the OAE filed a second complaint charging respondent with lying on seven applications to purchase handguns, in violation of *RPC* 8.4(c)(counts one and two).

After this matter was argued before us on May 13, 1999, respondent requested a copy of the transcript of the oral argument. It was then discovered that, due to a malfunction in either the tape or the tape-recording equipment, the argument had not been recorded. Accordingly, we permitted counsel to reargue the matter on October 14, 1999.

Respondent was admitted to the New Jersey bar in 1982. He was reprimanded in 1998 for improper client solicitation in the Durham Woods gas explosion case. *In re Meaden*, 155 *N.J.* 357 (1998).

* * *

The facts are not in dispute. It is unquestionable that respondent attempted to purchase goods for himself using a stolen credit card number. The issues are the appropriate measure

of discipline, whether and to what extent respondent's bipolar condition should mitigate his misconduct and whether respondent's post-hearing motion to exclude expunged records should be granted.

On March 25, 1996, while on vacation in Santa Barbara, California, respondent was in a camera store at the same time as another customer, Laurence Rickels. Respondent obtained Rickels' name and credit card number, although how he did it is not clear. About three weeks later, on April 15, 1996, respondent, identifying himself as Gordon Grice, telephoned Edwin Watts Golf Shops, a golf supply company in Fort Walton Beach, Florida. He stated that he was interested in buying golf clubs for an associate and that he would call back. Two days later, using Rickels' credit card number, respondent ordered two sets of golf clubs and two golf bags costing $5,800. He placed the order in the name of Gordon Grice, asking that the golf equipment be shipped to the Old Mill Inn in Basking Ridge, New Jersey, where he claimed that he and his partner, Rickels, would be staying.

When the salesperson became suspicious about the order, he contacted Rickels, who denied having authorized the purchase and knowing anyone named Gordon Grice. The salesperson then alerted the front desk manager at the Old Mill Inn that other companies might be delivering packages to Grice at that address. The front desk manager notified the Bernards Township Police, who set up a "sting" operation by arranging for the delivery of the golf equipment to the Old Mill Inn.

On the scheduled date of delivery, April 19, 1996, several Bernards Township Police detectives positioned themselves at the Old Mill Inn. A detective observed respondent leave the hotel with the packages and asked if he needed help. After respondent refused assistance, the detective identified himself, placed handcuffs on respondent and advised him that he was under arrest. There was a struggle, during which respondent fell to the ground, striking his forehead and breaking his eyeglasses. When asked to identify himself, respondent gave his own name. Respondent told the detective that he did not "know what this was all about" and that he had found the boxes in the Old Mill Inn. Upon searching respondent, the detective found fraudulent business cards in the name of "Rickles, Grice & Nappa, LLC, Media Advisors, Gordon D. Grice, Vice President."

A search of respondent's briefcase and bag revealed an Edwin Watts Golf Shops catalog addressed to Michael Nappa of Alpine, New Jersey, with the ordered items circled. The briefcase also contained pieces of mail addressed to others. The bag also contained credit card statements of two individuals residing in Mendham, New Jersey. Although the record refers to respondent's possible unauthorized use of credit cards of the individuals whose mail or statements were found in his possession, no criminal or ethics charges were filed against him in this regard.

When the police contacted Laurence Rickels, once again he denied both knowing either Gordon Grice or Charles Meaden and authorizing the purchase. According to Rickels,

on March 25, 1996 he used a credit card to buy film at a camera store in Santa Barbara, California. Rickels remembered that there was a couple in the store who sounded "Eastern" and that the female complained to the male that he already owned enough cameras. The owner of the store confirmed to the police that, based on the register records, Rickels and respondent had made purchases within minutes of each other.

Michael Nappa, the golf catalog addressee, also denied knowing anyone named Gordon Grice or Charles Meaden.

The police report stated that, at the time of respondent's arrest, his wallet contained a motor vehicle registration in the name of Hiranand Manglani. Manglani, too, denied knowing respondent and told the police that his registration had been stolen from either his vehicle or his mailbox. The formal ethics complaint did not make any charges in this context.

Respondent was indicted on charges of criminal attempt, contrary to *N.J.S.A.* 2C:5-1, and receiving stolen property, contrary to *N.J.S.A.* 2C:20-7. He was accepted into the pretrial intervention program. Respondent did not inform the OAE of these criminal charges, as required by *R.* 1:20-13(a)(1).

During the DEC hearing, respondent testified that, on June 10, 1994, when he applied for a firearms purchaser identification card, he failed to disclose that he had a psychiatric history. The application contained the following questions:

> Have you ever been confined or committed to a mental institution or hospital for treatment or observation of a mental or psychiatric condition on a temporary, interim or permanent basis?
>
> Have you ever been attended, treated or observed by any doctor or psychiatrist or at any hospital or mental institution on an in-patient or out-patient basis for any mental or psychiatric condition?

Although respondent had been involuntarily institutionalized in 1980 and had been treated by psychiatrists for depression since at least 1973, he answered both questions in the negative. In addition, on seven separate applications for permits to purchase a handgun, respondent answered the same questions in the same manner.

As a result of this testimony, the OAE filed a second complaint, charging respondent with a violation of *RPC* 8.4(c) for his failure to disclose his psychiatric history on these applications.

For his part, respondent admitted his attempted theft, although he could not recall many of the details surrounding his actions. Respondent did not know how he had obtained Rickels' credit card number, speculating that he had either picked up a copy of the credit card slip or had written down the number. Although respondent acknowledged a strong interest in golf and owned a patent on a golf game, he could not explain why he tried to buy the golf equipment when he already owned three sets of golf clubs and had not played golf during the past three years:

> The only explanation that I can offer for why I did what I did, which I consider a bizarre and pointless and stupid act, is the one that we have discussed . . . I

> feel that I was under a significant impairment at the time I took these actions. And I did something that was wrong and that I shouldn't have done. And that I might not – had even done if somebody had intervened. But because of circumstances of the mental state that I found myself in, without intervention, a form of drug treatment or a form of appropriate supervision under this withdrawal from medication, I certainly did it.
>
> And that is something that is very hard for me to accept. . . . This is not something that makes any sense. I was expecting the birth of my first son within three months of this incident. You know, it is just – I have no way of explaining it adequately. It is something that I spend a lot of time thinking about even today.
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> [T186][1]

Similarly, respondent had no explanation for his possession of mail, credit card statements, catalog and motor vehicle registration belonging to others, claiming no knowledge of how he had obtained those materials. He remembered that he had prepared the fictitious business cards on "the day of the incident." Although respondent possessed a golf catalog addressed to Michael Nappa, he testified that "the name Nappa to me is the name of a fictitious person. It is a name that I created under this hypomanic ideation with the business card . . . I am not aware of a Mr. Nappa existed [sic]."

Respondent related that his depression disorder affected his professional abilities. He traced his employment history from law school graduation, noting that his level of depression varied at different times, that at times his performance "soared" and that he had a "very mixed experience with work performance." From 1982 to 1991, respondent held positions

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[1] T refers to the transcript of the March 4, 1998 hearing before the DEC.

with approximately seven law firms or financial institutions. According to respondent, in 1991, while employed by Citibank, he suffered a breakdown and was not able to practice law for a long period. As a result of this condition, he received disability benefits, which continued as of the time of the ethics hearing. Respondent testified that he also maintained a small law practice.

As to his failure to inform the OAE about the criminal charges, respondent contended that he had been instructed by counsel not to discuss them with anyone.

With respect to his failure to disclose his psychiatric treatment on the firearms applications, respondent claimed that, when he discussed the issue with his psychiatrists several times, he was told that he could properly answer those questions in the negative. Respondent stated that, according to his psychiatrists, in the absence of a specific diagnosis, the fact that he was receiving medication and treatment for depression did not require disclosure of a mental disease or defect. Similarly, respondent asserted that his doctor had told him that he was not required to disclose his psychiatric condition on his New Jersey or New York bar applications. He stated that, although he had been hospitalized in Colorado in 1980 when he had suicidal intentions, he probably should not have been committed.

In mitigation, respondent presented evidence that he suffered from bipolar disorder. Respondent began seeing a psychiatrist weekly when he was sixteen or seventeen years old. About three years earlier, he had begun treatment with a neurologist for epilepsy. The

following psychiatrists treated respondent: (1) Stuart Yudofsky from 1973 through 1981, (2) Stephen A. Cole from 1982 through 1995 and (3) Shari Lusskin from 1995 to the present. Drs. Yudofsky and Cole diagnosed respondent with chronic depression and panic disorder, prescribing various antidepressant and anti-anxiety medications. Dr. Lusskin eventually diagnosed respondent with bipolar and panic disorders.

Dr. Robert Lloyd Goldstein, a psychiatrist, testified as an expert witness in respondent's behalf. Dr. Goldstein confirmed Dr. Lusskin's bipolar diagnosis, adding that respondent experienced periods of "hypomania or mania," characterized by grandiose feelings, reckless stock market speculation leading to substantial financial losses, increased sociability, impulsive shopping sprees, sleeplessness, unbounded energy and unrealistic optimism about himself and his abilities. According to Dr. Goldstein, Dr. Lusskin diagnosed respondent as bipolar and discontinued prescribing the antidepressant Zoloft for respondent, planning to prescribe Lithium after the Zoloft had completely dissipated from respondent's system.

Dr. Goldstein opined that, when respondent was taken off Zoloft, it precipitated a manic episode in him in April 1996. Dr. Goldstein noted that, during the trip to California, respondent displayed classic symptoms of the onset of a manic episode, that is, he talked rapidly and experienced increased irritability and sleeplessness. According to Dr. Goldstein, antisocial behaviors often accompany manic episodes and there is an increase in goal-

directed activity involving excessive planning and participation in multiple activities. Dr. Goldstein asserted that respondent suffered from bipolar disorder for a long time before Dr. Lusskin reached the proper diagnosis. He added that "it is so striking that the incident occurs just after he is taken off medication and before the new medication is instituted." T44-45.

In his November 24, 1997 report Dr. Goldstein offered the opinion that

> [respondent's] conduct in the incident leading to his arrest on April 19, 1996 (and at issue in this disciplinary proceeding) was directly and causally related to his acute and florid mental decompensation at the time, as a result of his out-of-control Bipolar Disorder (Manic-Depression). In my opinion, during the commission of the acts in question, he lacked any criminal intent, because he was in a grossly impaired mental state temporarily and lacked the requisite mental capacity to appreciate the nature of his conduct at the time. During an uncontrolled manic phase of the illness, individuals who are typically very conscientious and law-abiding may unthinkingly disregard ethical concerns, cavalierly violate the law, and exercise defective judgment and lack of impulse control, to the extent that they come into serious conflict with the law, which would otherwise be completely out of character for them. In my opinion, this is what happened in the case of Mr. Meaden during the incident in question. [Original emphasis].

At the DEC hearing, Dr. Goldstein testified that, although respondent knew what he was doing when he committed the attempted theft, he did not appreciate what he was doing or the consequences of his actions and could not control his behavior because of his "manicky condition." Dr. Goldstein stated, however, that respondent was not insane under the McNaughten test because he knew that he was trying to obtain golf clubs using someone else's credit card and he knew that it was wrong to do so. Dr. Goldstein added that, although

bipolar is not a curable disorder, it is treatable and controlled with Lithium and other medications.

Dr. Daniel P. Greenfield, a psychiatrist who examined respondent at the OAE's request, also diagnosed respondent as suffering from bipolar disorder. He disagreed with Dr. Goldstein's conclusion that respondent was "out of control" and, therefore, not responsible for his actions. According to Dr. Greenfield's report, respondent's basic cognitive ability was not impaired, although his judgment and insight into the act were:

> Put more simply, it is my psychiatric opinion -- held with a degree of reasonable medical probability -- that over the period of time in which he engaged in the complex and planned behaviors which he did (in connection with the incident in question), Mr. Meaden's judgement and insight into that act were clearly impaired, but his basic cognitive ability to do so was clearly not.
>
> Therefore, even though I agree that he was 'between medications' (my words) during that period of time, that situation did not so impair Mr. Meaden's basic cognitive and thought processes (for engaging in planned, purposeful, careful, and other such behaviors) as to have prevented him from doing so. He did engage in those behaviors, again, even though his judgement in having done so was clearly flawed.
>
> In summary, with regard to Mr. Meaden's mental state during the period of time surrounding the incident in question of April 19, 1996 which gave rise to the OAE Complaint described above, it is my psychiatric opinion -- held with a degree of reasonable medical probability -- that even though his judgement was unquestionably impaired in doing what he did in connection with that incident, his basic psychiatric condition, mental state, and ability to engage in high-level complex and cognitively driven behaviors was [sic] not.

At the DEC hearing, Dr. Greenfield pointed out that there was no indication in Dr. Lusskin's treatment notes that respondent exhibited symptoms of uncontrolled mania on April 10, 1996, his last office visit before the attempted theft. Dr. Greenfield concluded that

> my review of the literature doesn't support the idea that a discontinuation, even a sudden discontinuation of an antidepressant will result in an individual's manicky state, which would prevent him from acting in a sustained, purposeful, knowing planned series of behaviors over a sustained period of time. That doesn't happen.

Dr. Greenfield testified that, although respondent was in a vulnerable state because Dr. Lusskin had discontinued Zoloft and had not yet prescribed Lithium, respondent knew what he was doing when he attempted to obtain golf equipment using someone else's credit card and he understood that it was wrong to do so.

* * *

The DEC found that respondent violated all of the *RPCs* charged in both complaints. Specifically, the DEC determined that respondent's use of a stolen credit card number in an attempt to buy golf equipment violated *RPC* 8.4 (b) and (c). The DEC concluded that respondent had not met the standard required by *In re Jacob*, 95 *N.J.* 132 (1984), finding that respondent's conduct was knowing, volitional and purposeful and that there had been no break from reality or loss of competency, comprehension or will.

Although the complaint did not contain any charges in this respect, the DEC asserted that the materials found in respondent's possession belonging to recent victims of credit card theft indicated that "this was not the only incident of criminal conduct and that this conduct had been going on at least four or five months prior to this incident." The DEC found untruthful respondent's testimony that he knew nothing about the mail and other items found in his possession.

The DEC determined that respondent failed to inform the OAE of the criminal charges against him, as required by *R.* 1:20-13(a)(1). Moreover, the DEC found that respondent lied on his firearms purchaser identification card and handgun permit applications, when he denied that he had been institutionalized and that he had been treated for a mental or psychiatric condition. The DEC found that this conduct violated *RPC* 8.4(c). Considering as a mitigating factor that Lithium, a mood-stabilizing medication, had not been prescribed until after the incident and as an aggravating factor respondent's prior reprimand, the two attorney members of the DEC recommended a three-year suspension. The public member recommended disbarment.

* * *

On October 6, 1999, eight days before the October 14, 1999 reargument before us, respondent sent us a copy of an expungement order entered on September 15, 1999 by the Superior Court of New Jersey, Somerset County. The order expunged from court records and law enforcement agency records any information relating to respondent's arrest for the attempted theft of the golf clubs. At the October 14, 1999 reargument, respondent contended that, in light of the expungement order, we should not consider the criminal charges in assessing discipline for him.

On November 15, 1999, one month after the reargument before us, respondent filed a motion to exclude the expunged records from our consideration. He argued that, because *N.J.S.A.* 2C:52-27 provides that an arrest is deemed not to have occurred upon the granting of an expungement order, and because the express terms of the expungement order itself prohibit the use of expunged records, as a matter of law we were precluded from considering all facts legally expunged. Respondent further requested that we strike the expunged records from our files and refrain from publishing any facts concerning his criminal record. In reply to respondent's motion, the OAE argued that, if the Supreme Court has an interest in expunged criminal records in determining a bar applicant's fitness to practice law, it obviously has an interest in those records in determining the quantum of discipline to be imposed on attorneys who commit professional misconduct. The OAE noted that bar applicants are required to disclose their complete criminal histories to the Court's Committee

on Character, including any expunged matters. The OAE further contended that, because respondent stipulated to the underlying facts at the DEC hearing, he should not be allowed now to seek their exclusion.

We determined to consider respondent's motion in conjunction with our consideration of the merits of this matter.

* * *

Following a *de novo* review, we are satisfied by clear and convincing evidence that respondent committed ethics violations. Respondent admitted that he stole a credit card number and that he attempted to commit theft by using that number in violation of *RPC* 8.4(b). We are further satisfied that respondent's motion requesting us to (1) exclude from our consideration the facts surrounding his arrest on charges of attempted theft and receiving stolen property, (2) strike from our files all references to his arrest and (3) refrain from publication of any facts referencing his criminal records should be denied for the reasons expressed below.

On March 25, 1996, while on vacation in California, respondent stole the credit card number of Laurence Rickels. About three weeks later, on April 17, 1996, respondent ordered golf equipment costing $5,800, using Rickels' credit card number. Using the name Gordon

Grice, respondent requested delivery to the Old Mill Inn. On April 19, 1996 respondent picked up boxes at the Old Mill Inn that he believed contained the golf equipment that he had ordered. He could not explain why he had ordered the golf equipment, especially in light of the fact that he already owned three sets of golf clubs and had not played golf for three years.

Respondent presented evidence in mitigation that he suffered from bipolar disorder and had been "vulnerable" to a manic episode because his psychiatrist had discontinued his use of an antidepressant, but had not yet prescribed Lithium. However, respondent's proofs fall short of those required to excuse his misconduct. In *In re Jacob, supra*, 95 *N.J.* 132 (1984), the Court declared that for an attorney to escape mandatory disbarment for knowing misappropriation the attorney must show

> by competent medical proofs that [he or she] suffered a loss of competency, comprehension or will of a magnitude that could excuse egregious misconduct that was clearly knowing, volitional and purposeful.
> [*Id.* at 137]

The Court recently affirmed the continued viability of the *Jacob* standard in *In re Greenberg*,155 *N.J.* 138 (1998). Although the attorney in *Greenberg* admitted that he had knowingly misappropriated funds from his law firm, he claimed that his depressive disorder both excused and mitigated his misconduct, thereby sparing him from disbarment. The Court, however, determined that Greenberg had not met the *Jacob* standard:

> In making the determination whether an attorney lacked competency, comprehension or will, we have considered whether he or she was 'out of touch with reality or unable to appreciate the ethical quality of his [or

> her] acts.' *In re Bock*, 128 *N.J.* 270, 273, 602 *A.*2d 1307 (1992). Respondent relies on the testimony of two experts to support his claim that he was 'out of touch with reality' and had no conscious awareness of his actions when he misappropriated firm funds. . . . Neither expert goes so far as to claim that respondent was out of touch with reality or, alternatively, that he did not know what he was doing when he committed multiple acts of misappropriation . . . . Neither of respondent's experts testified that during the time he was stealing money from his law firm he was unable to appreciate the difference between right and wrong or the nature and quality of his acts.
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> [*In re Greenberg, supra*, 155 *N.J.* at 156-57]

Here, respondent's own expert, Dr. Goldstein, testified that respondent was not McNaughten insane because he was aware of the nature of his actions and knew that they were wrong. In contrast to Dr. Goldstein's opinions, Dr. Greenfield concluded that, although respondent's judgment and insight into his work were impaired to an extent, his disorder did not impair his cognitive ability. According to Dr. Greenfield, despite the absence of medication at the time of the incident, respondent had the ability to engage in planned, purposeful, careful behaviors and his ability to engage in high-level complex and cognitively driven behaviors was not impaired.

Respondent argued that, because he suffers from bipolar disorder, the Americans With Disabilities Act ("ADA"), 42 *U.S.C.* §12101 *et seq.*, precludes discipline. 42 *U.S.C.* §12132 and the regulations implementing the legislation, 28 *CFR* §35.130(b)(6), provide as follows:

> No qualified individual with a disability shall, by reason of such disability, be excluded from participation in, or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.

Other states have disciplined attorneys suffering from bipolar disorder. In *Florida Bar v. Clement*, 662 *So. 2d* 690 (Fla. 1995), *cert. denied*, 517 *U.S.* 1210, 116 *S. Ct.* 1829, 134 *L. Ed. 2d* 933 (1996), the Supreme Court of Florida determined that, although bipolar disorder is a disability under the ADA, the ADA did not prevent the imposition of sanctions on an attorney who was disbarred for knowing misappropriation of client funds. In imposing discipline, the Court considered its duty to protect the public. Similarly, the attorney in *Cincinnati Bar Ass'n v. Komarek*, 84 *Ohio St. 3d* 90, 702 *N.E. 2d* 62 (1998), was indefinitely suspended for knowing misappropriation of funds, despite the argument that the ADA prohibited the imposition of discipline on attorneys suffering from bipolar disorder. *See also In re Hunter*, 704 *A. 2d* 1154 (Vt. 1997); *In re Disciplinary Action Against Milloy*, 571 *N.W. 2d* 39 (Minn. 1997); *People v. Reynolds*, 933 *P. 2d* 1295 (Colo. 1997); *State ex rel. Oklahoma Bar Ass'n v. Busch*, 919 *P. 2d* 1114 (Okla. 1996).

It is clear, thus, that although the ADA recognizes bipolar disorder as a disability, it does not prohibit discipline. Moreover, the Court has disciplined attorneys suffering from bipolar disorder. See, *In re Tonzola*, ___ *N.J.* ___, 2000 *WL*92221 (2000) (attorney disbarred for knowing misappropriation of client funds and forgery of three judges' signatures, notwithstanding his bipolar disorder); *In re Beck*, 143 *N.J.* 135 (1996) (attorney suffering from bipolar disorder suspended for three years for numerous ethics violations spanning ten

matters; attorney had an extensive ethics history). It is the conduct, not the illness, that forms the basis for the discipline.

With respect to the other charges, respondent was obligated by *R.* 1:20-13(a)(1) to inform the OAE of criminal charges filed against him. Respondent failed to offer the testimony of the attorney who allegedly advised him not to discuss the charges with anyone.

Also, respondent's alleged reliance on his psychiatrists' advice for his false answers on the firearms purchase identification card and handgun permit applications strained credulity. Having been treated for more than twenty years for depression when he completed the applications, respondent knew or should have known that he had a psychiatric condition and that he was required to disclose both his condition and the 1980 involuntary commitment. And even if his reliance on his psychiatrists' advice is to be accepted, such reliance was far from reasonable. Respondent's failure to disclose his psychiatric history violated *RPC* 8.4(c).

We next address respondent's motion to exclude from our consideration, the expunged records. Initially, it must be noted that, although the statute expunges the records of an arrest or a conviction, it does not require the exclusion of the facts surrounding the arrest or conviction. The statute requires court clerks and law enforcement agencies to remove from their records any information relating to the criminal event. No such requirement applies to the Board. *N.J.S.A.* 2C:52-27 provides that an arrest shall be deemed not to have occurred

if an order of expungement is granted, "[u]nless otherwise provided by law." Thus, the statute is not absolute. Here, respondent seeks to subject the Board to the requirements of a statute contained in the Code of Criminal Justice. The statute is not applicable outside of the criminal justice or law enforcement arena. In *E.A. vs. New Jersey Real Estate Commission*, 208 *N.J.* 65 (1986), after the plaintiff's real estate and insurance licenses were suspended or revoked upon the plaintiff's criminal conviction, the licenses were restored. The plaintiff later forwarded to the New Jersey Real Estate Commission and the New Jersey Department of Insurance a copy of an expungement order and asked that they correct their records to remove any reference to the criminal conviction. Upon the agencies' refusal to honor the plaintiff's request, litigation ensued. In holding that the expungement statute was not binding on the state agencies, the Appellate Division stated as follows:

> Although plaintiff argues that 'all persons and all entities must comply' with the expungement order, both the order and the enabling legislation clearly have a more limited reach. The expungement order here is directed solely to the Clerk of the Superior Court and 'any law enforcement agency' which possesses relevant records. That focus of the order is consistent with the statutory definition of expungement, i.e., the extraction and isolation of records on file within any 'court, detention or correctional facility, law enforcement or criminal justice agency.' Plaintiff does not contend, nor do we find any reason to conclude, that either of the defendants is a law enforcement or criminal justice agency. . . . Plaintiff argues, rather, that there is an inequity in permitting a State licensing agency to maintain and use records of an occurrence which is elsewhere 'deemed not to have occurred' (*N.J.S.A.* 2C:52-27). If that result is inequitable, the remedy must be a legislative one. [Citations omitted].
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> [*E.A. vs. New Jersey Real Estate Commission, supra,* 208 *N.J.* at 68].

The Appellate Division, thus, ruled that it was permissible for both the New Jersey Real Estate Commission and the New Jersey Department of Insurance to make public the facts and circumstances surrounding the plaintiff's criminal background.

Moreover, as the OAE pointed out, an applicant for admission to the New Jersey bar must file a certified statement of candidate with the Committee on Character. *See Regulations Governing the Committee on Character, Regulation 201:1*. In that statement, the bar applicant must answer the following question:

> B. Have you ever been charged with, arrested for, or convicted of, the violation of any law (other than minor traffic violations)? **The entry of an expungement or sealing order does not relieve you of the duty to disclose the matter on this statement.** You may indicate the existence of such an order in your explanation. . . .
>
> If you answered yes to A, B, C, D or E, state the nature of the proceeding and give full details, on a separate attachment, including narrative of facts, dates, case numbers, name and location of court, if any, references to court records, facts and disposition. **Attach copies of all pleadings, arrest records, court documents, and certificates of disposition**. [Emphasis added].

See also In re Application of McLaughlin, 144 *N.J.* 133 (1996) (applicant to the bar was denied a certification of good character, in part due to his failure to disclose details of his criminal history; Court discussed requirement to answer questions, despite entry of expungement order).

The Court, thus, has a legitimate interest in the disclosure of criminal background if an individual is applying for admission to the bar. Because of the importance of maintaining

public confidence in the bar, attorneys as well as applicants are subject to scrutiny, even as to matters that are not necessarily related to the practice of law. For example, attorneys may be disciplined for criminal conduct, even if the conduct is not related to the practice of law. In *In re Musto*, 152 *N.J.* 165 (1997), the Court stated as follows:

> We will not excuse an ethics transgression or lessen the degree of punishment because an attorney's conduct did not involve the practice of law or arise from a client relationship. Offenses that evidence ethical shortcomings, although not committed in the attorney's professional capacity, may, nevertheless, warrant discipline. The obligation of an attorney to maintain the high standard of conduct required by a member of the bar applies even to activities that may not directly involve the practice of law or affect his or her clients. [Citations omitted].
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> [*Id.* at 173]

The Court's interest in the integrity of members of the bar, thus, applies to applicants as well as admitted attorneys. Accordingly, because the Court takes into account the criminal activity, even if expunged, of applicants to the bar, logically the Court also may consider the criminal activity, even if expunged, of members of the bar. Indeed, in *In re Hoerst*, 135 *N.J.* 98 (1994), the Court suspended the attorney for six months, based on a motion for final discipline following the attorney's guilty plea to a theft offense that was subsequently expunged. Moreover, the decision was published in the same manner as all attorney disciplinary cases, apparently without concern for any privacy issues.

Based on the foregoing, we find that, in general, the Court (and the Board) may consider an attorney's criminal background, despite the entry of an expungement order.

Moreover, in this particular case, there is an even stronger reason for denying respondent's motion. At the DEC hearing, respondent stipulated to the admission into evidence of the indictment and the investigative reports, all of which contain information about the facts and circumstances surrounding respondent's arrest. Respondent may not now seek to revoke that stipulation.

In summary, case law holds that expungement orders do not extend to licensing agencies; the Court has disciplined an attorney for a criminal offense, despite the entry of an expungement order; the Court requires applicants to the bar to disclose fully their criminal backgrounds, even if expungement orders have been obtained; respondent stipulated to the admission into evidence of the material he now seeks to exclude; and respondent waived any right to exclude the evidence, to strike the material from our files and to prevent us from publishing the facts surrounding respondent's arrest. Respondent's motion to exclude expunged records is, thus, denied. The motion is both specious and untimely, having been filed one month after oral argument of this matter, while the expungement order was obtained one month before the argument.

There remains the issue of the quantum of discipline. There is no bright-line rule for discipline for theft offenses committed by attorneys. Rather, various factors must be considered. In *In re Lunetta*, 118 *N.J.* 443 (1989), the Court stated that generally there is no rule requiring certain penalties for certain crimes and that

> [w]e consider the nature and severity of the crime, whether the crime is related to the practice of law, and any mitigating factors such as respondent's reputation, his prior trustworthy conduct and general good conduct.
> [*In re Lunetta, supra,* 118 *N.J.* at 445-46]

In cases dealing with theft, generally the discipline has ranged from a reprimand to disbarment. In less serious theft matters, the discipline has ranged from a reprimand to a short suspension. *See In re Butler*, 152 *N.J.* 445 (1998) (attorney reprimanded after he sold a computer that belonged to his law firm; attorney had unsuccessfully argued that the computer had been given to him in lieu of salary); *In re Birchall*, 126 *N.J.* 344 (1991) (attorney reprimanded for twice entering his former wife's home without permission and removing property to use as a negotiating tool for obtaining more favorable visitation rights with his children; attorney suffered from alcoholism); and *In re Burns*, 142 *N.J.* 490 (1995) (attorney suspended for six months after he admitted to three incidents of burglary of an automobile, two incidents of theft by unlawful taking and one incident of unlawful possession of burglary tools; attorney had been experiencing side effects of depression medication).

More serious misconduct has been met with sterner discipline. An attorney convicted of theft by unlawful taking and of burglarizing doctors' homes to obtain keys to doctors' offices to obtain prescription drugs was disbarred. *In re Hasbrouck*, 152 *N.J.* 366 (1998). The attorney had received a prior one-year suspension for obtaining a controlled dangerous substance by fraud and for uttering a forged prescription. The Court commented that the

attorney's continuing pattern of illegal conduct demanded stronger discipline than would an isolated criminal incident. In another case, the Court disbarred an attorney who, as trustee in a bankruptcy matter, devised an elaborate scheme to steal funds from the registry of the bankruptcy court. *In re Obringer*, 152 *N.J.* 76 (1997). The Court considered that the theft was the result of premeditation, that the attorney submitted false documents to a tribunal and otherwise engaged in a course of fraud, deceit and misrepresentation upon a tribunal.

The Court also disbarred an attorney (and former judge) who pleaded guilty to theft by failure to make required disposition of property received. *In re Imbriani*, 149 *N.J.* 521 (1997). There, the attorney deposited into his own bank account numerous rent and real estate tax checks payable to a real estate partnership of which he was the managing partner. The Court noted that the attorney pleaded guilty to a crime of dishonesty resulting from several acts of misappropriation occurring over an extended period of time, reasoning that

> [o]rdinarily, when a crime 'evidence[s] continuing and prolonged, rather than episodic, involvement in [illegal activity and] . . . [is] motivated by personal greed,' the offense merits disbarment. *Goldberg, supra,* 105 *N.J.* at 283.
> *[In re Imbriani, supra,* 149 *N.J.* at 532]

Imbriani had urged a suspension, relying on *In re Hoerst, supra*, 135 *N.J.* 98 (1994). In *Hoerst,* the attorney, a county prosecutor, pleaded guilty to the same crime, theft by failure to make required disposition of property. Hoerst had used forfeiture funds to attend a law-enforcement conference in California, including a side trip, for himself, a companion and two

others. He was suspended for six months. The Court, however, distinguished *Imbriani* from *Hoerst:*

> In *Hoerst*, the respondent's plea established a single episode of misconduct involving a lesser sum of money. In addition, in *Hoerst* there had been no guidelines promulgated in connection with such official trips using forfeited funds. In contrast, respondent's plea acknowledged that his acts were unlawful. Respondent's misconduct involved numerous acts and substantial amounts of money.
>
> Had respondent's crime involved only one act, *Hoerst* may very well have been controlling. However, respondent's criminal conduct encompassed a long period of time.
>
> [*In re Imbriani, supra,* 149 *N.J.* at 534]

Here, as in *Hoerst*, respondent's crime involved only one act. Although the DEC appeared to find that respondent committed other credit card thefts, the complaint did not charge him with those offenses and the evidence of such wrongdoing was not clear and convincing. The record establishes that two of the people whose mail was in respondent's possession had recently been the victims of credit card thefts. However, there is no evidence that respondent was responsible for these thefts.

With respect to the misrepresentations made on the firearms purchase identification card and handgun permit applications, respondent relied on *Application of Strait*, 120 *N.J.* 477 (1990). In that case, the Court ordered an applicant admitted to the bar, despite his history of criminal conduct and alcohol and drug addictions. The applicant had been convicted of numerous crimes committed between 1969 and 1971, including larceny,

possession of a dangerous weapon, breaking and entering, and assault with a dangerous weapon. Moreover, the attorney had been addicted to alcohol and narcotics from the time of his adolescence in the early 1970s through 1985. Although the attorney disclosed the arrests in his 1984, 1985 and 1986 bar applications, he specifically denied any drug or alcohol addictions and denied any charges for larceny or similar offense. In ordering the attorney admitted to the bar, the Court considered the testimony or reports of seven expert witnesses, including evidence that the attorney had recovered from his addictions. The Court determined that he had demonstrated personal reform and rehabilitation. The Court discussed the attorney's responses to the questions on the bar admission applications as follows:

> The record makes clear that respondent had suffered from substance addiction for much of his life. We have acknowledged in other contexts that alcoholism is a disease that adversely affects the exercise of good judgment and clear thinking, and is frequently characterized by denial of its existence. . . . Strait testified that prior to his arrest in July 1985, he had denied being addicted to drugs and alcohol. We find credible respondent's explanation that the negative responses he had provided in the December 1984 and June 1985 Certified Statements to the questions concerning substance addiction were the product of that denial – that is, the responses had undoubtedly been incorrect, but Strait had not perceived that they were untruthful. . . .
>
> Acknowledging that respondent's applications had been inartfully and perhaps carelessly drafted, we cannot conclude from this record that his responses were intended to deceive or mislead the Committee on Character.
>
> [*Id.* at 493-94]

Although *Strait* involved the truthfulness of an attorney's representations on an application, its holding is not applicable to this matter. Here, there was no showing that

respondent's misrepresentations on the weapons applications were attributable to his bipolar condition. Rather, respondent contended that he relied on his psychiatrist's advice when he completed those applications. As noted above, that contention was not accepted.

More on point is *In re Kotok*, 108 *N.J.* 314 (1987), in which an attorney misrepresented his criminal history on both the bar admission application and an application for a permit to carry a handgun. He was also found guilty of a conflict of interest that caused his client serious economic injury. The attorney, arrested on armed robbery and weapons charges, was indicted for possession of a pistol without a permit and malicious assault. In June 1975, he pleaded guilty to the disorderly persons offense of possession of a weapon with intent to assault. Yet, in August 1976, one year after entering his guilty plea to those charges, the attorney certified on his bar admission application that, after he moved to New Jersey with a pistol, he simply forgot to register the pistol in this state. He also misrepresented the applicable criminal charge, certifying that he had pleaded guilty to possession of a weapon without a permit. The ethics hearing on the misrepresentation charge took place in July 1983. About three months later, on November 4, 1983, when the attorney applied for a permit to purchase a handgun, he stated that he had pleaded guilty to the disorderly persons offense of possession of a pistol without a permit. The Court found that the attorney had concealed his arrest for armed robbery and weapons offenses and his indictment for possession of a pistol without a permit and assault. The Court further

determined that the attorney had intentionally given the Committee on Character the false impression that, because he had simply forgotten to register a legally owned pistol, he had been convicted of a minor disorderly persons offense. In addition, the Court found that the attorney had given false information on the handgun application and that the attorney had to know that the information was false because, only three months earlier, he had been involved in ethics hearings concerning the same offense. The Court, however, determined that the attorney had not benefitted from the misinformation and that he had not intended to deceive the authorities or to influence the handgun application. In imposing discipline, the Court stated that, ordinarily, it would have suspended the attorney for one year for the conflict of interest, revoked his license to practice law for misrepresentations on the bar admission application and publicly reprimanded him for mischaracterizing the disorderly persons offense on the handgun application. In light of respondent's otherwise unblemished professional career and the significant passage of time since the attorney's activities, the Court instead suspended the imposition of the one-year suspension and the license revocation and placed the attorney on probation for one year, during which time he was required to perform community services. Noting that the consideration of remoteness was not applicable to the handgun application misrepresentation, the Court imposed a public reprimand for the attorney's actions.

Here, over a three-week period, respondent devised a scheme to order $5,800 worth of golf equipment using a credit card number that he had stolen while on vacation. Respondent also failed to inform the OAE of the criminal charges filed against him and failed to disclose his psychiatric condition and involuntary psychiatric commitment on applications for a firearms purchase identification card as well as for seven handgun permits.

In mitigation, it is undisputed that respondent suffered from a bipolar disorder that had been diagnosed, but not treated, at the time of the incident. In aggravation, respondent displayed a pattern of denying responsibility for his actions. He blamed his attempted theft on a lack of "intervention," he attributed to his attorney's advice his failure to advise the OAE of the criminal charges against him and he claimed that his psychiatrists had advised him that, on his weapons applications, he could accurately deny any psychiatric condition or hospitalization. Respondent's failure to assume responsibility for his actions was troubling. We further considered respondent's prior reprimand for improper solicitation of clients.

A four-member majority of the Board voted to suspend respondent for three years. Respondent must demonstrate proof of fitness to practice law before he is reinstated. Upon reinstatement, respondent shall serve under the guidance of a proctor for two years. In addition, within one year of his reinstatement, he must complete the skills and methods course offered by the Institute for Continuing Legal Education.

Three members voted to recommend disbarment based on respondent's theft of the credit card number and the numerous misrepresentations on the applications for a firearms purchase identification card and seven handgun permits. Two members did not participate.

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

Dated: 4/12/00

By: _____
LEE M. HYMERLING
Chair
Disciplinary Review Board

SUPREME COURT OF NEW JERSEY

DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Charles E. Meaden
Docket No. DRB 99-082

Argued: May 13, 1999 and October 14, 1999

Decided: April 12, 2000

Disposition: Three-year suspension

Members	Disbar	Three-Year Suspension	Reprimand	Admonition	Dismiss	Disqualified	Did not Participate
Hymerling		x					
Cole		x					
Boylan							x
Brody		x					
Lolla	x						
Maudsley							x
Peterson	x						
Schwartz	x						
Wissinger		x					
Total:	3	4					2

Robyn M. Hill 4/14/00
Robyn M. Hill
Chief Counsel