SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
DOCKET NOS. DRB 99-293 and 99-335

IN THE MATTER OF
T. JOHN FORKIN
AN ATTORNEY AT LAW

Decision

Argued: December 16, 1999

Decided: October 9, 2000

Walter J. Ray appeared on behalf of the District I Ethics Committee in Docket No. 99-293.
Ann C. Pearl appeared on behalf of the District IV Ethics Committee in Docket No.99-335.

Francis J. Hartman appeared on behalf of respondent.

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

These matters were before us based on two recommendations for discipline, one filed by the District I Ethics Committee and the other filed by the District IV Ethics Committee ("DECs"). The specific allegations of the complaints are set forth in the recitation of facts for each matter.

Respondent was admitted to the New Jersey bar in 1995. At the time relevant to these matters, he was engaged in private practice in Bridgeton, Cumberland County. In September 1997, respondent closed his law office and accepted employment as an assistant solicitor for

not sent to Miranda.

Beginning in or about late September 1997 Miranda made a number of unsuccessful attempts to contact respondent. Ultimately, she was able to locate respondent through a third party and to schedule an appointment for November 1997. On the day of the appointment, respondent called Miranda and stated that he would be unable to meet with her. Respondent also failed to keep a December 1997 appointment with Miranda. According to respondent, he believed that Miranda would contact him to reschedule their meeting. Miranda, however, filed an ethics grievance against respondent in December 1997. As of that time Miranda believed that respondent was still her attorney because she had paid him for the representation. Respondent did not supply Miranda with an itemized bill for his services and did not return any of her retainer.

* * *

The complaint charged respondent with a violation of RPC 1.1(a) (gross neglect), RPC 1.3 (lack of diligence), RPC 1.4 (failure to communicate), RPC 1.5 (failure to return an unearned fee) and RPC 1.16 (improper termination of representation), mistakenly cited as RPC 1.6.[3]

The DEC determined that respondent was guilty of each of the allegations of the

[3]Throughout the record, RPC 1.16 is mistakenly cited as RPC 1.6. The correct rule is used for this decision, without reference to the error.

complaint.

The Maurone Matter (District Docket No. I-97-030E)

On January 23, 1997 Bruce L. Maurone retained respondent to represent him in a civil matter. Maurone paid respondent $300 as a fee and $200 for an expert's report.

Respondent appeared on Maurone's behalf on three occasions, when the case was listed for hearing and then continued. In early- to mid-October 1997 Maurone, rather than respondent, received notice of an upcoming November 6,1997 arbitration hearing.[4] After receiving the notice, Maurone attempted to contact respondent, to no avail. Maurone testified that, as of that time, he had not received a letter from respondent advising him that he was closing his practice.

In or about mid-October Maurone located respondent's new office and spoke with him. Maurone testified that, after this conversation, it was his understanding that respondent was still representing him. Respondent, however, failed to appear for the November 6, 1997 arbitration hearing.

After their October 1997 conversation, Maurone was unable to contact respondent. By letter dated November 17, 1997 Maurone requested that respondent return his file. Respondent turned over Maurone's file on December 8, 1997, after he had been served with the ethics grievance filed by Maurone.

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[4]Presumably the notice was sent to Maurone because respondent had left private practice and had notified the court of his withdrawal from the matter.

Respondent claimed that he had notified Maurone that he was closing his law office and stated that he did not appear for the November 1997 hearing because he thought that he was no longer representing Maurone. There is an indication in the record that Maurone did receive respondent's letter recommending another attorney because, at the DEC hearing, Maurone stated that the attorney's name was in the file.

* * *

The complaint charged respondent with a violation of RPC 1.1(a), RPC 1.3, RPC 1.4, RPC 1.5 and RPC 1.16.

The DEC found respondent guilty of a violation of RPC 1.16 only, for his failure to notify Maurone that he was leaving private practice and failure to insure that his client's rights were adequately protected.

The Padilla Matter (District Docket No. I-97-031E)

On April 22, 1997 Rosaura Padilla retained respondent to represent her in a divorce proceeding. She made periodic payments to respondent totaling $750. Padilla made her last payment on August 25, 1997. Padilla testified that, at the time she retained respondent, she and her then-husband had been separated for eight years and had two children.[5]

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[5]The complaint alleges that respondent told Padilla that her husband had been served with the complaint and that they were awaiting a court date. Respondent did not recall that conversation.

Following a second meeting with respondent in or about April 1997, Padilla made numerous attempts to contact him, to no avail. Ultimately, in November 1997, Padilla called respondent at home. During that conversation, respondent stated that he would not represent her any longer and agreed to return her fee.[6] He did not, however.

Respondent admitted telling Padilla that he would return the retainer fee. He testified that he did not send the funds, however, because he was waiting for proof of payments, which Padilla failed to send him. Respondent added that, in December 1997, he received Padilla's ethics grievance and did not think it was appropriate to return the funds at that time.

According to respondent, he did not file a complaint for divorce in Padilla's behalf because, in early August 1997, it was brought to his attention by his paralegal that "[t]he date of the separation would predate the birth of [Padilla's] children and that kind of raised some issues as to the validity of the complaint and that caused some concern." T3/10/99 302-303. In addition, respondent stated, more than half of his fee was still outstanding. According to respondent, he told his secretary to contact Padilla and set up a meeting to discuss the complaint. Respondent did not follow up on that directive.

Padilla denied receiving notice from respondent's office, advising her that he was closing his practice.

The record did not fully explore this issue; neither did the DEC discuss it in its report.

[6]The record does not reveal if respondent gave Padilla a reason for his withdrawal from the representation.

* * *

The complaint charged respondent with a violation of RPC 1.1(a), RPC 1.3, RPC 1.4, RPC 1.5 and RPC 1.16.

The DEC found that respondent was guilty of each of the alleged violations of the complaint.

The Lewis Matter (District Docket No. I-97-031E)

On July 9, 1997 Dr. John A. Lewis retained respondent to represent him in a real estate matter. The agreed upon fee was $1,000, which Lewis paid on that date. Lewis testified that, after their July 9, 1997 meeting, he did not hear from respondent for a number of months, despite at least six calls and a number of letters. Contrarily, respondent testified that, between July 9 and September 1, 1997, he had six conversations with Lewis and that, at an unspecified time, he had difficulty reaching Lewis, who had become ill. Respondent and Lewis agreed, however, that respondent called Lewis in January 1998. During that conversation, respondent stated that he was working in Atlantic County. According to Lewis, he did not inquire about the status of his case during their conversation. Rather, respondent told Lewis that he would get back to him. Seven to ten days later, respondent contacted Lewis and advised him to file criminal charges against one of the parties to the civil suit and then to contact him. Thereafter, Lewis did not attempt to contact respondent

and ultimately retained other counsel, to whom respondent forwarded the file.

The record reveals that, in connection with the civil action, respondent wrote letters in Lewis' behalf and had numerous phone calls with the parties involved. He did not file any pleadings in Lewis' behalf.

Respondent did not refund any part of Lewis' retainer. Furthermore, according to Lewis, until their January 1998 conversation respondent had not advised him that he was closing his law practice.

* * *

The complaint charged respondent with a violation of RPC 1.1(a), RPC 1.3, RPC 1.4, RPC 1.5 and RPC 1.16.

The DEC determined that respondent was guilty of each of the allegations of the complaint.

The Wiley Matter (District Docket No. I-97-029E)

In March 1997 respondent was retained to represent John D. Wiley in a criminal matter. There are no allegations that respondent mishandled the case. The only charge was that respondent failed to cooperate with the DEC investigator assigned to this matter, in violation of RPC 8.1. Respondent was also charged, in each of the above four matters, with

a violation of RPC 8.1, for failure to cooperate with the DEC.

* * *

The DEC was unable to find clear and convincing evidence of a violation of RPC 8.1 in any of the five matters. The DEC determined that respondent cooperated with the DEC investigator on some level, replying to letters and turning over the documents he had available. Respondent stated that his records were in disarray and that some of the documents in these matters were either in storage and could not be located or were on a computer hard drive that "crashed". In addition, respondent's counsel notified the investigator that there was no further documentation or information available to them.

Respondent was also charged, in the Miranda, Maurone, Padilla and Lewis matters, with a violation of RPC 1.1(b) (pattern of neglect), when the matters were considered together.

The DEC did not find respondent guilty of a pattern of neglect, concluding that, because respondent's misconduct in these matters occurred during the same time period, that is, when he "abandoned his private practice," that conduct did not constitute a pattern of neglect.

* * *

Respondent advanced a number of mitigating factors. Specifically, respondent's father passed away in the fall of 1996. Respondent, who apparently already had a drinking problem, sought solace in alcohol and his alcohol consumption escalated.[7] In addition, respondent did not have a more experienced attorney to guide him early in his law practice.

In or about September 1997 respondent began psychiatric treatment with Gary M. Glass, M.D.[8] Respondent testified that he has been sober since May 1998, has learned to handle stress and has maintained stability while working in the Atlantic City Solicitor's Office. In his report, Dr. Glass noted that

> . . .the unusual aspects of the relationship between John and his father brought elements to his passing that were far beyond the normal pain of a son losing his father. John indicates that he was arrested and charged with Driving Under the Influence on his way home from father's [sic] funeral.
> [Exhibit R-23 at 3]

Dr. Glass concluded as follows:

> There is no doubt that John Forkin endured a period of severe depression and anxiety. During this period he was impulsive, drank frequently and to excess, and his judgment was impaired. <u>He does not feel that his behavior impacted adversely on his work per se</u> but there is evidence that he handled his professional life with a distracted attention that was characteristic of his behavior for this brief period but was not part of his character either before his father's passing or since his abstinence. However, when his behaviors were brought to his attention he sought help immediately and through the right channels. John pursued the Lawyer's Assistance Program and participated actively in AA. He 'cleaned up his act' and in spite of significant stresses since then, he has refrained from alcohol use and sought help in an appropriate professional manner. In this interval, John has become a highly productive and successful solicitor.

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[7]Respondent did not meet his father until he was twelve years old.

[8]Respondent had been seeing another psychiatrist, whom he stopped seeing when he moved.

> While I am in no position to speak of the specific content of John Forkin's thought processes during this period, it is safe to say that his thinking was impaired by his excessive alcohol intake and that while it appears that he did adequately for his clients with regard to representation, the organizational aspects of his practice, organization of his finances, and his personal life suffered considerably. There is not doubt that these problems were an outgrowth of a brief period of impulsive and uncharacteristic behaviors during a time of serious and self destructive depression. John has resoled [sic] those conflicts, come to grips with his alcohol abuse/addiction, sought help in appropriate ways and created a successful and productive professional life. I think is [sic] was wise and continues to be important that John's professional activities now occur in the setting of a 'job' in which he is surrounded by other professionals and support staff. While I believe that he will ultimately be able to return to the private and independent practice of law (which he may, or may, not choose) I believe that he is best served, in the short run, by his current professional position. (Emphasis added.)
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> [Exhibit R-23 at 5-6][9]

* * *

The hearing panel report summarized both the mitigating and aggravating factors set forth in the record:

> We have considered mitigating facts such as the loss of respondent's father in October, 1996, respondent's recovery from alcohol dependence, and respondent's lack of supervision by an experienced attorney. We also considered as aggravating factors respondent's continued failure to take responsibility for the negligent manner in which he abandoned his private practice of law and his lack of credibility in presenting his defense that his paralegal took care of notifying clients, e.g., he failed to call the paralegal as a witness, he introduced no evidence of other clients who were notified that he was going out of business, he could not produce copies of any letters sent to clients, no attorneys who took on the clients testified on his behalf.
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> [Hearing panel report at 7]

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[9]Respondent submitted a more current report from Dr. Glass on the morning of the hearing before us.

As mentioned above, the DEC found that respondent had violated RPC 1.1(a), RPC 1.3, RPC 1.4, RPC 1.5 and RPC 1.16 in the Miranda, Padilla and Lewis matters and RPC 1.16 in Maurone. The DEC recommended that respondent be suspended for a period of six months. In addition, the DEC believed that respondent should return the following retainers: $800 to Miranda, $700 to Padilla and $750 to Lewis (the DEC noted that respondent did perform some work in Lewis' behalf). Furthermore, the DEC suggested that, when respondent returns to practice, he associate himself with an experienced attorney to serve as his mentor.

* * *

DOCKET NO. DRB 99-335
District Docket No. IV-97-034E[10]

The complaint in this matter set out five counts of misconduct. The first three counts arose from a business transaction in which respondent was involved and alleged a violation of RPC 3.3(a)(1) (knowing false statement of material fact or law to a tribunal, mistakenly cited as RPC 3.3(b)) and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation) (count one); RPC 8.4(b) (criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer) and RPC 8.4(c) (count two); RPC 8.1(a) (false statement of fact or law to a disciplinary authority) and RPC 8.4(c) (count three);

[10]This matter was referred to the DEC by a Cumberland County judge. The matter was sent to the District IV Ethics Committee for hearing. The matter was also brought to the attention of the Office of the Attorney General and the Cumberland County Prosecutor. Neither office took action against respondent.

RPC 7.5(a)(1) (false or misleading letterhead) (count four); and RPC 5.5(a) violation of the regulations governing the legal profession, more specifically, practicing law while ineligible) (count five).

Count One

On June 28, 1996 respondent borrowed $18,528 from The Farmers and Merchants National Bank of Bridgeton ("F&M") to purchase a second-hand 1989 Mercedes Benz automobile ("the Mercedes" or "the car") from Theodore Ritter, Esq. Ritter was counsel for F&M. The note, disclosure and security agreement signed by respondent states as follows:

> Property. The word 'property' means the following described property which I am giving to Lender as security for the payment of [illegible] indebtedness and performance of all my other obligations under this Agreement:
> 1989 MERCEDES BENZ, 4DR, SERIAL # WDBCA24E3KA471972
> [Exhibit C-7]

Respondent contends that he did not anticipate that the car would serve as collateral for the loan. Rather, he claims, this was to be an unsecured "bridge" loan until the closing of a mortgage loan on his house. Kenneth C. Konschak, Jr., a vice-president of F&M, testified, however, that, although this was to be a temporary auto loan to be paid off by the mortgage proceeds, there was no question that the car was to be used to secure the loan. Mark Yoshioka, an employee of the mortgagee bank, testified that Konschak had contacted him about the loan. Yoshioka advised him that respondent's intent was to pay off the car loan with the mortgage proceeds. Ritter, too, testified that the car loan was to be a bridge loan in anticipation of the mortgage loan. As it turned out, however, there were insufficient funds from the mortgage loan to pay off the car loan.

Respondent argued that F&M personnel never asked him for the title to the car, a requirement if the car was to be used as security for the loan. Konschak, however, testified that F&M had asked for the title.

In April 1997 respondent's loan payments were two months in arrears. He issued a check to F&M for two months' payments, but the check was returned for insufficient funds. Thereafter, on April 29, 1997, Ritter, as counsel for F&M, filed a complaint for replevin against respondent. The complaint alleged that respondent had made only one payment on the car since February 28, 1997, that the check had been returned for insufficient funds, that respondent had failed to give F&M the title to the car and that he had failed to provide proof that the car was fully insured. The complaint sought to compel respondent to surrender the car, to pay compensatory damages, to surrender the original certificate of title, to provide proof of liability, collision and comprehensive insurance, and to estop respondent from denying F&M's interest in the car.

On April 29, 1997 the Honorable Michael Brooke Fisher, J.S.C., signed an order to show cause requiring respondent to produce to the court, on or before May 2, 1997, proof of full insurance coverage on the car and to appear on June 6, 1997 to show cause why he should not be ordered to surrender the car and the certificate of title. Respondent was served with the complaint and order to show cause on April 30, 1997. On the same date, respondent wrote to Ritter, acknowledged receipt of the complaint and order to show cause and discussed the underlying matter.

In evidence is a vehicle lease agreement and retail buyers order revealing that, on May 1, 1997, respondent traded in the Mercedes to a car dealer for a credit on a lease of another

vehicle. Previously, in or about July or August 1996, respondent had titled the Mercedes in Pennsylvania. Respondent traded in the car without a title and executed an application for a duplicate certificate of title. According to the car salesman that assisted respondent, respondent had stated that he owned the Mercedes. Similarly, the general manager of the dealership testified that respondent had told him that he had clear, unencumbered title to the Mercedes.

On May 2, 1997 Ritter appeared before Judge Fisher. Respondent was not present. Respondent had previously advised Ritter that he had a scheduling conflict that day. Ritter told respondent that his appearance was not necessary, but that he had to provide proof of full insurance coverage to the court. When respondent failed to do so, the judge ordered him to appear in court on May 5, 1997 with proof of full insurance coverage and to deliver the car and the certificate of title to the courthouse. Immediately after his court appearance, Ritter "faxed" to respondent a copy of the court's order and acknowledged receipt of an insurance policy that respondent had "faxed" to him that day. Ritter pointed out that the insurance policy supplied by respondent provided only liability coverage. Ritter urged respondent not to drive the car and suggested that he consult with an attorney.

On May 2, 1997 respondent wrote to Judge Fisher to advise him that the Mercedes did not serve as collateral for the loan and that the loan was supposed to have been consolidated with his mortgage loan. Respondent also informed Judge Fisher that the bank had never requested title to the Mercedes and that the title was "still lawfully in [his] name." Furthermore, respondent stated that Ritter had co-signed the loan, a contention Ritter denied. Finally, respondent advised the court that the car would not be driven until he had an

opportunity to consult with counsel.

On May 2, 1997 respondent called Judge Fisher's then law clerk, Michael Paul Fralinger, Esq. According to Fralinger, during the conversation he advised respondent to appear on May 5 and to bring the car to the courthouse. Respondent stated that he could not bring the Mercedes because it was in storage. Respondent further stated that the insurance company did not want him to drive the car because of problems with the insurance coverage. Respondent did not tell Fralinger that he had traded in the Mercedes.

On May 5, 1997 respondent and Ritter appeared before Judge Fisher. At that time, respondent revealed to the court that he had traded in the Mercedes for a credit on another vehicle. The following exchange took place between respondent and Judge Fisher:

> MR. FORKIN: . . Frankly, that automobile has been - - is no longer in my name. I had to - - I represent I conveyed title to an individual, automobile agency, that frankly I had to go and get another vehicle because the Mercedes kept breaking. I could no longer afford to keep it on the road.
>
> . . .
>
> THE COURT: - - Friday, when my - - this morning, my law clerk advised me that he had some conversations with you on Friday in which you indicated some concern because the order required not only you to be here but to bring the motor vehicle - -
>
> MR. FORKIN: Yes, Your Honor.
>
> THE COURT: - - and that you said that it was garaged to him.
>
> MR. FORKIN: Well, its not - - it's not being driven. My representation, Your Honor, to your law clerk was the fact that this was in a garage and, to my understanding, it is; it's not being driven.[11] But the bottom line is, Your Honor, that the automobile is no longer - -

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[11]Despite respondent's contention to the contrary, a salesman from the dealership testified that respondent did not ask them to keep the car off the road.

THE COURT: You didn't tell him you sold the automobile. You said it was garaged.

. . .

THE COURT: You told my law clerk that if the bank was concerned about the vehicle being driven while it's uninsured, that, that presenting [sic] a problem for you and that the vehicle was garaged.

MR. FORKIN: I never said it was still in my custody, Your Honor. I'm not trying to play cute, Your Honor. I just - -

THE COURT: Well, you're not trying to but you're achieving that. So when you told my law clerk that the vehicle was garaged, - -

MR. FORKIN: That there's no danger of it being driven and that there was no danger of it being broken on the roadside. Your Honor, - -

THE COURT: All right. Wait. But you sold it?

MR. FORKIN: Your Honor, I no longer have the title to the vehicle. That's correct.

[Exhibit C-5 at 5-7]

Also during the May 5, 1997 proceedings, respondent told the court that Ritter had co-signed the loan in his presence. Respondent was shown the loan documents, which stated that the loan was secured by the Mercedes. Respondent admitted that the signature on the documents was his. Respondent also stated that he did not receive the order to show cause until May 1, 1997. (As noted above, he was served with the document on April 30, 1997.) In response to Judge Fisher's question as to whether respondent was in possession of the Mercedes on April 29, 1997, when the order was signed, respondent stated "[n]ot to my recollection. No, Your Honor, I was not." In addition, respondent told the court that he had sold the car "a week or so before this came up," that "the Mercedes was traded in before this action," and that "[t]he car was disposed of before I knew of this suit and before Mr. Ritter

filed this replevin action as per my recollection of what the facts are."[12]

Following the May 5, 1997 court appearance, Judge Fisher ordered that a representative of the car dealership appear before him on May 12, 1997 to show cause why the car should not be surrendered, pursuant to F&M's security interest. The court further ordered that the car be garaged pending the hearing.

On May 12, 1997 the court learned that respondent had been served with the order to show cause on April 30, 1997 and that he had sold the Mercedes on May 1, 1997. Judge Fisher pointed out to respondent that, during the prior court appearance, respondent had stated that he had sold the car before having knowledge of these proceedings. In reply, respondent stated that he had not reviewed the complaint and order to show cause, when the documents had arrived in his office. He explained that he had client matters with F&M and he believed that the documents related to a client. Ritter then directed the court's attention to a "fax" he received from respondent, dated April 30, 1997 (mentioned above), in which he stated that he could not appear on May 2, 1997 and expressed a desire to be represented by counsel.

Near the end of the proceedings, respondent apologized to the court for "any negligent misrepresentations:"

> . . . I just merely was hit with this matter, with these matters. I didn't properly read the documents when I signed them; it's pretty obvious.
>
> I think what happened was perhaps somewhere along the line, you know, I wasn't provided with a copy of the documents and I retained the title to the vehicle, believing that the vehicle was mine. The title of the vehicle is somewhere up in Pennsylvania. I'm sure of that. I just want there to be no

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[12]The replevin action was filed on April 29, 1997 and served on respondent on April 30, 1997. Respondent traded in the car on May 1, 1997.

> misunderstanding, Your Honor, that I in no way, shape or form intentionally misled Your Honor or your law clerk.
>
> I frankly didn't know how to deal with this matter, Your Honor. I was panicked when I received the documents, knowing what I had done with the vehicle and not to dig myself into any more of a hole, when I spoke to your law clerk, I just wanted to assure him that the vehicle was safe. I didn't mean to mislead Your Honor's Court in saying that - - in not representing to the Court that it had been sold at that time. I didn't know which way to turn, Your Honor, and I sincerely apologize for not being forthcoming in that.
>
> There was no intent on my part to hide anything, as it were, and it's a personal embarrassment to myself, Your Honor, not to have read the documents as I signed them at the bank in my haste and there was some other collateral personal issues at that period late this past summer that affected me and I apologize for not reading clearly. It was my duty to read. I can only make a representation before Your Honor that I will make my best effort to bring this matter current.
>
> [Exhibit C-6 at 42-43]

On May 12, 1997 respondent entered into a consent order with Ritter and the attorney for the car dealer, in which he agreed to pay the car dealer $9,500 by May 13, 1997 and $750 in counsel fees thirty days thereafter. Respondent failed to pay that amount and filed for bankruptcy in late July or early August 1997.

* * *

The complaint charged respondent with a violation of <u>RPC</u> 3.3(a)(1) (false statement of material fact or law to a tribunal) and <u>RPC</u> 8.4(c).

The DEC found that each of the allegations in the first count of the complaint were proven by clear and convincing evidence. The DEC pointed out that respondent's answer essentially admitted several of the allegations. Specifically, the DEC determined that respondent borrowed approximately $18,000 from F&M to purchase a Mercedes, which was

to serve as collateral for the loan. The DEC labeled as "totally false" respondent's contention that he did not anticipate that the Mercedes would serve as collateral, noting that respondent signed a note-disclosure and security agreement. Exhibit C-7.

The DEC found further that respondent's comments to Judge Fisher and to Fralinger, his law clerk, were "false and misleading."

Count Two

When respondent obtained the car's title in Pennsylvania, he submitted to the Pennsylvania Bureau of Driver Licensing a certificate of title form, an assigned risk plan application and a tax and fees form. On the back of the New Jersey certificate of title and on the tax and fees form, both of which respondent signed, the purchase price of the Mercedes was recorded as $8,500. Ritter testified that he had recorded the price on the certificate of title as $18,500. The documentation showed that respondent paid $634 in sales tax, an amount calculated over an $8,500 purchase price. Thus, the sales tax due to Pennsylvania was under-reported by the $10,000 difference between the actual purchase price and the recorded purchase price.

Respondent denied having altered the purchase price of the car on the documents. Respondent testified that, when he went to register the vehicle, he turned over his forms and was told the amount of tax due. He claimed that he did not recall having filled out the paperwork in question. Respondent stated that he signed the forms and paid the specified amount without reviewing the paperwork.

* * *

The complaint charged respondent with a violation of RPC 8.4(b) (criminal act) and RPC 8.4(c).

The DEC found clear and convincing evidence of the alleged misconduct. There was no question to the DEC that respondent submitted to the Pennsylvania Bureau of Driver Licensing a certificate of title containing false information. The DEC concluded that the only individual who had a financial interest in changing the price of the automobile on the form was respondent "and that he in fact should have been aware if an amount of $634.00 was stated in the sales tax form, that this would not be an appropriate amount based on the purchase price of the automobile." Accordingly, the DEC found that respondent violated RPC 8.4(c). The DEC was unable to conclude, however, that respondent had committed a criminal act, in violation of RPC 8.4(b).

Count Three

By letter dated August 18, 1997 respondent replied to the grievance filed in this matter. He stated his belief that the Mercedes was not collateral for the F&M loan and that the original arrangement was that the loan would be tied in with a mortgage loan. He also contended that he did not read the complaint and order to show cause until a day or two after its receipt and after he had already traded in the Mercedes.

By letter dated August 27, 1997 to the Office of Attorney Ethics (OAE), respondent stood by "the position that [he] was unaware that [he] did not have full and legal title to the

car in question or that the loan in question was anything but a personal loan." Respondent reiterated that he did not review the April 29, 1997 order to show cause until May 1, 1997 and did not know of F&M's action until after he had traded in the car. According to respondent, he believed that the order to show cause was related to client matters.

In a January 15, 1998 interview with OAE investigators, respondent essentially restated his unawareness that the car was collateral for the F&M loan. Exhibit C-31.

By letter dated January 27, 1998 to the OAE, respondent denied the allegation that he had altered the purchase price of the car on the certificate of title.

* * *

The complaint charged respondent with a violation of RPC 8.1(a) (false statement to a disciplinary authority) and RPC 8.4(c).

The DEC concluded that the allegations in the complaint had been proven by clear and convincing evidence and that respondent had violated RPC 8.1(a) and RPC 8.4(c). In connection with this count, the DEC stated as follows:

> It should be noted here that the committee firmly believes that the Third Count of this Complaint is quite similar in its totally [sic] with the allegations contained in the First Count of this Complaint and is essentially a restatement of those allegations. In other words, the committee is of the belief that the respondent did not in fact make false or misleading or statements of misrepresentation in an entirely different area, but was consistent in this beliefs [sic] as set forth in his Answer to the allegations of the First and Third Counts.
> [Hearing panel report at 3]

Count Four

Respondent's correspondence to Judge Fisher and to Ritter was written on letterhead indicating that respondent was a member of the bars of New Jersey, Pennsylvania and the District of Columbia. In fact, respondent is admitted to the practice of law in New Jersey only. The record does not reveal how long respondent used this letterhead.

Respondent testified that a friend had created a letterhead template for him on the computer, indicating respondent's admission to the practice of law in Pennsylvania and the District of Columbia, seemingly in anticipation of his bar membership in those jurisdictions. According to respondent, he did not know how to change the template and he would print letterhead and "white-out" the references to the Pennsylvania and District of Columbia bars. Respondent admitted, however, that he "didn't always white it out."

* * *

The complaint charged respondent with a violation of RPC 7.5(a)(1)(misleading letterhead).

The DEC concluded that, although the allegations of the complaint had been proven, respondent's representation on his letterhead was "essentially a gross oversight on his behalf." The DEC found that, although respondent's conduct was a technical violation of RPC 7.5(a)(1), it was unintentional. The DEC did not include this count in its recommendation for the appropriate measure of discipline.

Count Five

The records maintained by the New Jersey Institute for Continuing Legal Education (ICLE) revealed that, as of January 30, 1998, respondent had not completed the mandatory skills and methods courses. In evidence is a notice from ICLE to respondent, dated July 23, 1997, advising him of his deficiency in connection with the first year's requirements.

Respondent testified that he never received notice that he was ineligible to practice law. He stated that he had been unable to attend the classes because his driver's license had been suspended. Respondent has since completed the first-, second- and third-year ICLE requirements.

* * *

The complaint charged respondent with a violation of RPC 5.5(a).

The DEC did not find clear and convincing evidence of a violation in this count, concluding that ICLE had not given proper notice to respondent that he had not completed certain required courses.

* * *

In sum, the DEC concluded that respondent 1)made a false statement of material fact or law to a tribunal; 2) engaged in conduct involving dishonesty, fraud, deceit or misrepresentation and 3) knowingly made a false statement of fact or law in connection with

a disciplinary matter. In mitigation, the DEC considered the testimony offered about respondent's father and respondent's dependence on alcohol, as well as the character letters submitted in respondent's behalf and the report of his psychiatrist.[13] Furthermore, the DEC considered that respondent continues to attend AA meetings and receives counseling for his problems.

In light of the above factors, the DEC concluded that respondent should be suspended for six months and that he should practice under the supervision of a proctor for two years, after his reinstatement.

* * *

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

In the four matters under Docket No. DRB 99-293, respondent was retained to pursue two matrimonial matters and two civil actions. Although respondent took some steps in his clients' interests, he failed to follow through and failed to adequately protect his clients' interests when he closed his practice. The record does not disclose the harm, if any, that befell respondent's clients in the Miranda, Maurone, Padilla and Lewis matters. Unquestionably, however, the clients would have been better off had respondent pursued their cases more diligently.

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[13]Respondent offered essentially the same mitigation evidence submitted in the matters under Docket No. DRB 99-293.

The DEC found that respondent demonstrated gross neglect, lack of diligence and failure to communicate in Miranda, Padilla and Lewis. We disagree with the finding of gross neglect in Lewis, based on respondent's calls and letters in Lewis' behalf, and find a lack of diligence instead. In Miranda and Padilla, respondent took no meaningful action in the divorce proceedings, failing even to file complaints or to clearly advise his clients of his inaction. Similarly, respondent's lack of diligence was evident, as was his failure to communicate with the three clients.

In Maurone, the DEC did not find that respondent committed any of the above violations. The record reveals, however, that there came a time when Maurone had great difficulty in communicating with respondent, seemingly in connection with respondent's closing of his law office.

As to respondent's failure to return unearned fees, the DEC correctly found a violation in that regard in Miranda, Padilla and Lewis. Although respondent may have earned a portion of what he had been paid, at the time that he closed his practice he should have prepared itemized bills for his clients and returned unearned retainers. The DEC correctly found, however, that respondent probably earned the $300 he was paid in Maurone, in light of the three court appearances on the client's behalf.

Also, the evidence clearly shows that respondent closed his law practice without notice to at least two clients, Miranda and Padilla, and without returning their files. On the day of oral argument before us, counsel for respondent submitted a supplemental brief with exhibits, including, among other documents, a form letter allegedly sent to his clients, notifying them that he intended to close his practice; and a letter from an attorney to whom

respondent referred clients, stating that the attorney had spoken with several of respondent's clients. Nevertheless, those letters were not sent to at least two clients, Miranda and Padilla. In essence, respondent abandoned those two clients, in violation of RPC 1.16(d).

As to the violation of RPC 8.1(b), failure to cooperate with the DEC, the DEC determined that respondent had cooperated to the best of his ability, turning over whatever documentation he had available to him. We agree.

We disagree, however, with the DEC's conclusion that respondent did not demonstrate a pattern of neglect in these matters because the misconduct occurred during the same time period. That has never been a factor in our consideration of this charge. Moreover, there is no question that respondent neglected all the within matters, albeit to different degrees. We find, thus, that respondent violated RPC 1.1(b).

* * *

In Docket No. DRB 99-293, respondent's egregious neglect of his clients' matters requires the imposition of a suspension. See In the Matter of Antonio Velazquez, Docket No. DRB 97-455 (three-month suspension for abandonment of seven clients and conduct prejudicial to the administration of justice in two of the matters; the attorney's poor emotional state was considered as mitigation)[14] and In re Bock, 128 N.J. 270 (1992) (six-month suspension for attorney who, while serving as both a part-time municipal court judge and a lawyer, with approximately sixty to seventy pending cases, abandoned both positions

[14]Velazquez was disbarred for unrelated violations.

by feigning his own death). Here, the misconduct was not as egregious as that of Velazquez or Bock. Thus, were the Miranda, Maurone, Padilla and Lewis matters the only cases before us, a brief term of suspension would suffice. Respondent, however, committed many other egregious violations in the matter under Docket No. DRB 99-335. There, respondent displayed dishonest conduct when he traded in the Mercedes knowing that the bank had a security interest in the car and failing to disclose this fact to the car dealer. Respondent's contention that he was unaware that the car served as collateral for the F&M loan defies credibility. Similarly, respondent's explanation that, when he made his erroneous statements to the court, he believed that he was telling the truth is unworthy of belief. For example, respondent's statement that he did not review F&M's complaint and order to show cause until after he traded in the Mercedes on May 1, 1997 was false, as evidenced by his April 30, 1997 letter to Ritter about the underlying matter. In addition, respondent's statement to Fralinger that the car was in storage was clearly intended to mislead the court into believing that respondent still had possession of the car. Undeniably, thus, respondent's statements to the judge and the law clerk were intentionally untruthful and misleading, in violation of RPC 3.3(a)(1) and RPC 8.4(c).

To the OAE, too, respondent made misrepresentations. Respondent took the position, during the investigation of this matter, that he was not guilty of misconduct because he had believed that his earlier statements to the court were truthful. For example, respondent stood by his position that the F&M loan was not a personal loan and that he did not know that he did not have title to the car. However, the loan document that respondent signed clearly states that the Mercedes was collateral for the loan. Also, respondent stated to the OAE that

he had told Fralinger that he no longer had the car. Fralinger, however, testified that respondent had told him that the car was in storage.

Although respondent seeks to explain away each of his untrue statements as unintentional, whether made to the OAE, the court or the judge's law clerk, we find that respondent's false statements are too numerous to be excused as unpremeditated. A review of respondent's April 30, 1997 letter to Ritter, sent in reply to the order to show cause, leads to no other conclusion but that respondent knew the purpose of that pleading. At a minimum, respondent's statement that he wanted to consult with counsel undermines his contention that he thought that the order to show cause was in connection with a client matter.

In short, the logical conclusion is that respondent knew that the car was the collateral for the loan and traded it in while he still had possession of it. He then claimed that he had not read the loan documents very carefully, if at all. The totality of the evidence in the record compels a different conclusion. It is simply not believable that respondent, an attorney, would not have reviewed the loan papers carefully and later, too, would not have examined the sales tax papers in detail. We rejected respondent's contentions as untruthful.

In addition to the above, in count two the DEC determined that respondent had altered the purchase price of the car on the documents submitted in connection with the title application in Pennsylvania. We agree with the DEC's conclusion. It simply defies reason that someone at the Pennsylvania Bureau of Driver Licensing would intentionally have altered the document. The only possible inference is that respondent himself altered the price of the car on the certificate of title to avoid paying additional taxes.

As to count four, respondent contended, in a nutshell, that this letterhead form was on

his computer, that he did not know how to change it and that he occasionally forgot to white-out the inaccurate information. Respondent's explanation would have been more believable if he had provided a letter written in the same time period, with the correction. Although we find a violation of RPC 7.5(a)(1) in this regard, this finding does not alter the appropriate measure of discipline required by the balance of respondent's serious infractions.

As to the last count (practicing law while ineligible), we are unable to agree with the DEC. Whether respondent received notification that he was ineligible to practice is irrelevant. Attorneys have a duty to be aware of the requirements of the practice of law. This situation is analogous to attorneys who fail to pay the annual assessment to the New Jersey Lawyers' Fund for Client Protection. In those cases, we have placed on attorneys the responsibility for complying with the court rules and have disregarded claims of ignorance of the rules. We find, thus, that respondent violated RPC 5.5(a) and R.1:26 by practicing law while ineligible.

We now turn to the appropriate quantum of discipline for respondent's overall misconduct. In a recent case, an attorney who sold a computer that belonged to his law firm and kept the proceeds received a reprimand. In re Butler, 152 N.J. 445 (1998). Here, respondent's conduct was far more egregious. He traded in a car to which he did not hold title, lied repeatedly to a tribunal about his actions and continued his pattern of deception in his communications with the OAE.

In In re Kernan, 118 N.J. 361 (1990) an attorney, in his own matrimonial matter, failed to inform the judge that he had transferred real property for no consideration when he had previously certified to the judge that the property was one of his assets. The Court called the

conveyance a "purported fraud." Moreover, the Court concluded that Kernan had knowingly made a false certification when he "failed to amend the certification of his assets to disclose the transfer." The Court considered the attorney's prior private reprimand an aggravating factor and imposed a three-month suspension.

Given respondent's serious misconduct in these matters and his abandonment of his clients, we unanimously determined to impose a one-year suspension. We considered respondent's testimony about the death of his father and his alcoholism. Even taking those factors into account, however, respondent's misconduct was so serious and showed such a deficiency of character that a lengthy suspension is clearly warranted.

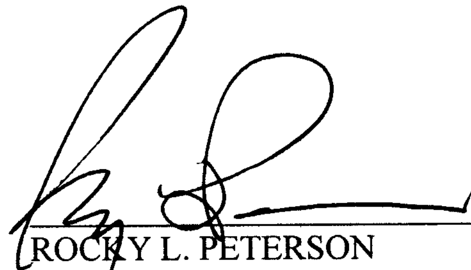
Prior to reinstatement, respondent is to provide a report from a psychiatrist approved by the Office of Attorney Ethics, attesting to his fitness to practice law. Furthermore, upon reinstatement, respondent is to practice under the supervision of a proctor for two years.

Two members recused themselves.

One more point warrants mention. The DEC urged us to direct respondent to return the unearned fees to his clients. We conclude, however, that the fee arbitration system is the proper forum for such matters.

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

Dated: 10/9/2000

By: 

ROCKY L. PETERSON
Vice Chair
Disciplinary Review Board

SUPREME COURT OF NEW JERSEY

DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Thomas John Forkin
Docket No. DRB 99-293 and 99-335

Argued: **December 16, 1999**

Decided: **October 9, 2000**

Disposition: **One-year suspension**

Members	Disbar	One-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:		7				2	

By [signature] 12/19/00
Robyn M. Hill
Chief Counsel