SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 97-302

IN THE MATTER OF :
MARC D'ARIENZO :
AN ATTORNEY AT LAW :

Decision

Argued: November 20, 1997

Decided: June 29, 1998

Jerome J. Convery appeared on behalf of the District VIII Ethics Committee ("DEC").

Respondent failed to appear, despite proper notice of the hearing.

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

Respondent was admitted to the New Jersey bar in 1993 and maintains a law office in Monmouth County. Respondent has no prior ethics history.

The two-count complaint alleged violations of RPC 3.3(a)(1) (false statements of fact or law to a tribunal) and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation) for respondent's alleged misrepresentations to a municipal court judge.

* * *

On April 10, 1996 respondent appeared before the municipal judge for the Borough of Allentown, representing a defendant in a pending criminal matter. The April 10, 1996 hearing was an adjourned date, the matter having been previously scheduled for the morning of April 3, 1996. The judge had a colloquy with respondent regarding his failure to appear at the April 3 hearing.[1] Respondent's explained at the time that he had "faxed" a letter to the court as soon as he was aware that he was also scheduled to appear in Middlesex County Superior Court on the morning of April 3. The judge pointed out that the "fax" had been transmitted to the court at 7:55 P.M. on the evening of April 2 and that, as a result, she had not learned of the alleged conflict until the morning of the hearing. Respondent's "fax" stated that he was unaware, until the previous day, that he had to appear in Middlesex at the same time as his scheduled appearance in Allentown. The "fax" requested that the Allentown matter either be adjourned or marked "ready-hold" for later in the day.[2]

The judge testified at the DEC hearing that respondent had a history of either failing to appear on matters before her or of being late in those instances when he did appear. She recalled being distressed, on April 3, 1996, about respondent's chronic behavior. She, thus, had her court administrator call the Superior Court judge's chambers to verify that respondent had a conflicting appearance. The judge learned that, contrary to respondent's representations in the letter, the Middlesex matter had been scheduled one week before the

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[1]The colloquy was conducted on the record. See Exhibit C-3.

[2]The letter was not made a part of the record. However, respondent did not refute the judge's account of its contents.

Allentown matter, thereby according him ample time to alert Allentown of the conflict.

The April 10, 1996 exchange between the judge and respondent took place at the end of the day in an empty courtroom. The judge told respondent that she had learned that the Middlesex matter had been scheduled a full week prior to April 3. She believed that respondent knew of the Middlesex hearing at least four days in advance of the hearing and perhaps as much as a week beforehand. She cautioned respondent that misrepresentations to her court constituted ethics violations, told him never to misrepresent anything to her court again and warned him never to appear late in her courtroom. The judge then sanctioned respondent in the amount of $200 for contempt of court for his failure to appear on April 3 and for his failure to give the court timely notice of his conflict. Finally, she gave respondent a "heads-up" lecture with respect to the bad reputation he had already earned in his relatively short (four-year) legal career. The judge told respondent that, aside from her own observations, she had heard similar stories from other area judges about respondent's failure to appear and chronic lateness. She urged respondent to reassess his behavior in that regard and to do whatever was necessary to save his reputation. Exhibit C-3.

At the DEC hearing, respondent admitted that he had indeed received notice of the Middlesex appearance earlier than the day before the Allentown hearing. He claimed, however, that, because he had not received a retainer from his client until March 29, 1996, some four days before the date of the conflicting hearings, he had not had one week to notify the judge of the conflict. Respondent asserted that Superior Court matters take precedence

over municipal court matters, pursuant to the rules. On that basis, he claimed, he had attended the Middlesex hearing, instead of the Allentown proceeding. Respondent admitted that, once he arrived in Middlesex, he neither attempted to call Allentown to let that court know that he was delayed nor called the court later to explain his failure to appear. Respondent explained that, by the time he had arrived at the Allentown courthouse, at about 1:00 P.M., the court had adjourned for the day. He acknowledged that he should have informed the judge of his conflict sooner, accepted the blame for his failure to do so and noted that he had immediately paid the $200 sanction.

Three months later, on July 24, 1996, respondent was again due to appear in a criminal matter before the same judge at 10:00 A.M., this time in her capacity as the municipal court judge for Bordentown Township. Although respondent's client, Edward Coleman, arrived on time for the hearing, respondent was not in the courtroom. When the judge called the matter, Coleman told the court that respondent had not contacted him and that he did not know why respondent was not present. Respondent finally appeared at approximately 12:15 P.M., or more than two hours late. When the judge asked him why he was late, respondent answered, "I was in Lyndhurst Court, Judge, which is all the way up in North Jersey". Exhibit C-4 at 8. The judge imposed a $750 sanction for respondent's lateness and left the bench to contact the Lyndhurst municipal court. She found out that Lyndhurst had no court scheduled for that day. She returned to the bench, whereupon a second colloquy took place:

THE COURT: Mr. D'Arienzo, would you come up a moment, please? You told me that the reason that you were here late was because you had

a matter in a Lyndhurst Municipal Court --

MR. D'ARIENZO: Lakehurst, Judge. Lakehurst. Lakehurst.

THE COURT: Lakehurst. What was the name of the case?

MR. D'ARIENZO: I had an arraignment, Judge, which I was appearing before. I have --

THE COURT: What was the name of the defendant?

MR. D'ARIENZO: I have it in the car, Judge, it's a -- like I said, it was an arraignment. The guy's name was --

THE COURT: What time did you arrive in court there?

MR. D'ARIENZO: I was in court at -- I believe court started at ten o'clock, Judge and I was out of there by 11.

THE COURT: Lakehurst because you told me Lyndhurst --

MR. D'ARIENZO: My apologies, Judge.

THE COURT: --and Lyndhurst does not have court today. So, you're sure it was Lakehurst --

MR. D'ARIENZO: Yes, sir, Judge. Yes, ma'am.

THE COURT: --because you said Lyndhurst on the record twice.

MR. D'ARIENZO: My apologies if I said Lyndhurst, Judge, it's Lakehurst.

THE COURT: All right. Why don't you get the file and tell me the name of the defendant, please.

MR. D'ARIENZO: Yes, please.

Respondent then gave the court the name Kermit Rodriguez, the alleged client who was arraigned that day.

Respondent testified at the DEC hearing that he had recognized his mistaken reference to Lyndhurst after the judge left the bench to verify his story. He claimed that he had immediately attempted to reach the judge in chambers, but had been unsuccessful. The judge, in turn, had no recollection of any attempt on respondent's part to correct himself until she returned to the bench with the information from Lyndhurst. In fact, she testified, she was shocked to hear respondent say that he actually had been in Lakehurst.

After the hearing the judge examined the list of arraignments with the Lakehurst municipal court, only to find out that respondent's name was not on the list. Indeed, Rodriguez had appeared pro se at his arraignment that day.

Respondent explained at the DEC hearing that he had intended to say Lakehurst, not Lyndhurst, and that he had not meant to say that he was "all the way up in North Jersey," but instead "all the way over in the eastern part of the state." Respondent added that he had told the judge that the Lakehurst matter was an arraignment and had provided the name Kermit Rodriguez in an effort to legitimize his admitted lateness. Respondent then offered that he had actually gone to Lakehurst to attempt to discuss a case with the municipal prosecutor, who was not there. It was then, respondent continued, that he had met a man, Rodriguez, who was about to appear pro se at his own arraignment; respondent left his business card with Rodriguez and suggested that he call respondent in the event that he needed an attorney. Apparently, Rodriguez later retained respondent.

In both his answer and at the DEC hearing, respondent admitted that he should have

been more forthright with the judge, in that he should have told her that he was in Lakehurst to tend to other business, not to represent Rodriguez at his arraignment. Respondent claimed to have been so "frenzied" at the time by the judge's questions that he acted "irresponsibly" when answering her.

* * *

The DEC found that respondent had made at least two misrepresentations to the judge, in violation of RPC 3.3 (a)(1) and RPC 8.4(c). The DEC noted that respondent had continued to make misrepresentations to the judge, despite her earlier warnings. The DEC recommended the imposition of a reprimand.

* * *

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

In the Allentown matter the judge warned respondent that she would not tolerate his failure to appear at hearings, lateness and misrepresentations. She sanctioned respondent for his failure to timely notify the court of his conflict and for his failure to appear in Allentown

on April 3, 1996. She also warned respondent not to make misrepresentations to the court because they constituted ethics violations.

With regard to the Bordentown matter, respondent went to great lengths to explain why he was late for his appearance before the judge. Respondent claimed that he was confused about the name of the municipality in which he had appeared just hours before. Respondent had no explanation for his apparent confusion between the northern and eastern parts of the state.

Respondent's contentions are simply not credible. It was not until he was confronted with the fact that the Lyndhurst court had no proceedings that day that he corrected himself and added his alleged involvement in Rodriguez's arraignment. Even assuming, for the sake of argument, that respondent recognized the mistake about Lyndhurst almost immediately, it is unlikely that he immediately sought the judge in chambers to correct the mistake out of a sense of propriety. Given respondent's proclivity to lie, it is more likely that he was attempting to head the judge off at the pass before she called Lyndhurst. What is more, respondent then went on to lie about why he was in Lakehurst. He was not there for Rodriguez's arraignment. He was there to speak to a prosecutor about another matter. He happened to meet Rodriguez for the first time on that day. In fact, Rodriguez did not retain respondent at the time, appearing pro se at his arraignment.

Respondent suggested that, in mitigation, it was the judge's forceful demeanor that had led him to behave in the manner he did. However, there is nothing to support the

contention that the judge's demeanor was anything but appropriate. It was respondent's repeated failure to show up for court appearances and to do so in a timely fashion that understandably disturbed the judge. Indeed, the judge took respondent aside and warned him of the consequences of making misrepresentations to the court. She even disclosed to him that he was earning a bad reputation with other judges as well. She suggested that he straighten out his law practice while there was still time. She did all of this because respondent was relatively new to the bar. She was trying to nudge a wayward young attorney back on track, if possible. There is nothing suggesting that the judge's actions were the cause for respondent's difficulty in telling the truth. Unfortunately, the judge's warnings had no apparent impact on respondent. He lied at least twice in the same day at the Bordentown hearing; the second lie was an attempt to extricate himself from the first.

In light of the foregoing, the Board found that respondent violated both RPC 3.3 (a) (1) and RPC 8.4(c) with his series of lies to the judge.

Ordinarily a reprimand would be the appropriate degree of discipline for an isolated incident of misrepresentation. However, this respondent was brazen enough to lie to the same judge who had recently given him a very stern warning that his misconduct would not be tolerated. Respondent's misconduct was not a single, isolated event. Rather, his lies were almost seamless in their transition.

Respondent's behavior was appalling. However, he has no prior ethics history and does not appear, at this juncture, to be totally incorrigible. Were it not for these mitigating

factors, the discipline imposed would have been much harsher. For respondent's misconduct, the Board unanimously determined to suspend him for a period of three months, with the further condition that, for a period of two years after his reinstatement, respondent immediately report to the Office of Attorney Ethics any finding of contempt or any sanction imposed against him by a court or other tribunal. See In re Kernan, 118 N.J. 361 (1990) (where the attorney was suspended for three months for, in his own matrimonial matter, failing to inform the court of a transfer of property for no consideration, which had previously been certified to the court as an asset. Moreover, the attorney knowingly made a false certification to the court when he failed to amend the previous certification to include the property as an asset. The attorney had a prior private reprimand). One member did not participate.

The Board further required respondent to reimburse the Disciplinary Oversight Committee for administrative expenses.

Dated: 6/29/98

By: _____
Lee M. Hymerling
Chair
Disciplinary Review Board

SUPREME COURT OF NEW JERSEY

DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Marc D'Arienzo
Docket No. DRB 97-302

Argued: November 20, 1997

Decided: June 29, 1998

Disposition: Three-Month Suspension

Members	Disbar	Three-Month Suspension	Reprimand	Admonition	Dismiss	Disqualified	Did not Participate
Hymerling		x					
Zazzali		x					
Brody		x					
Cole		x					
Lolla		x					
Maudsley		x					
Peterson							x
Schwartz		x					
Thompson		x					
Total:		8					1

Robyn M. Hill 7/27/98
Robyn M. Hill
Chief Counsel