

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 97-236

IN THE MATTER OF :
MICHAEL J. CHULAK, :
AN ATTORNEY AT LAW :

Decision

Argued: September 18, 1997

Decided: November 18, 1997

Nathan Beck appeared on behalf of the District VI Ethics Committee.

Jonathan Goodman appeared on behalf of respondent.

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

This matter was before the Board based on a recommendation for discipline filed by the District VI Ethics Committee ("DEC"). The complaint charged respondent with a violation of RPC 3.3(a) (lack of candor toward a tribunal) and RPC 5.5(b) (assisting a non-attorney in the unauthorized practice of law). During the hearing, respondent's counsel admitted the majority of the allegations in the complaint and the violation of RPC 3.3(a). He denied, however, that respondent assisted another in activities that constituted the unauthorized practice of law.

Respondent was admitted to the New Jersey bar in 1986. During the time relevant to the within matter, he was engaged in the practice of law in Union City, Hudson County. It is unclear whether respondent still practices law. Respondent has no history of discipline.

In June 1993 a pleading was filed in the matter of Moscoso, et al. v. OG Auto Sales Inc. In

or about February 1994, during oral argument on motions, the court learned that, although the pleading was allegedly signed and filed by respondent as attorney for Paul Falcon, the defendant, it was actually filed by Falcon, who had signed respondent's name on the pleading. At the time, respondent denied knowledge of Falcon's actions, but stated to the Court that he would adopt the contents of the pleading and represent Falcon.

In addition, on or about December 13, 1993, business account check #640, apparently signed by respondent, was submitted to the court to pay a fee. The check named "Paul Falcon, Esq" and respondent as the joint account holders. Falcon is not an attorney. During the February 1994 court proceeding, respondent told the judge that he was unaware of why "Paul Falcon, Esq." appeared on his pre-printed checks.

By letter dated February 18, 1994 the court referred this matter to the Office of Attorney Ethics ("OAE"). Thereafter, by letter dated May 27, 1994, respondent replied to the grievance. He explained that Falcon, a friend of twenty years, had signed the pleading. Respondent further stated as follows:

... I was very busy and I guess [Falcon] did not want to bother me and he signed my name. He also has almost completed law school and is quite familiar with legal documents, and would have no problem drafting something. As stated, I was not aware of this until after the fact, and Mr. Falcon did not intentionally want to do something wrong, but merely keep things moving.

[Exhibit P-2]

With regard to check #640, respondent stated that

[i]t is not Mr. Falcon's intent to practice law until he is licensed, or to engage in work which is performed by lawyers. The reason that his name is in the account with Esq. after it, is that his wife did this as an innocent gesture, as a kind of present for returning to law school, as he is ready to graduate. No harm was meant by his wife in

doing this, nor to my knowledge did Mr. Falcon hold himself out as a lawyer, or hold himself out as a lawyer to clients and collect fees for work which would be performed by lawyers.

[Exhibit P-2]

Check number 640 was drawn against respondent's business account, which is now closed. Respondent's counsel admitted that, for some period of time, respondent knowingly issued checks in connection with his practice that were in violation of the court rules. According to respondent's counsel, there were no other complaints stemming from the account.

The formal ethics complaint charged, and respondent admitted, that he supplied contradictory information as to whether he had signed the check in question. Specifically, according to the investigative report, respondent originally told the investigator that the check bore his signature. Later, when the investigator advised of the contradictory information given to the court, respondent claimed that someone else had signed the check.

With regard to the signature and a statement on the memo line of the check, which reads "Paul Case," respondent's counsel stated that "it was signed, but we believe that to be Mr. Falcon who signed it. In any event, that was done as well. [Respondent] would have expressed knowledge because in his own handwriting in the memo it says, 'Paul's case.' In fact, that is [respondent's] handwriting. I recognize it myself. Not that I'm any expert, but I've seen enough of it."

In his answer, respondent gave the following information about his relationship with Falcon:

At the outset, respondent and Paul Falcon (hereinafter referred to as Falcon) have known each other for a period of time in excess of twenty years. During that period of time respondent and Falcon acquired and, to some extent, together as well as with others, own and manage joint real estate ventures. Moreover, respondent maintains his law office in a building owned by Falcon either director [sic] or vicariously/beneficially. Furthermore, Falcon together with his spouse, maintained an insurance agency and continue to operate a

travel agency in adjoining rooms on the same floor of the premises. Finally, although there is a separate entrance to respondent's office with direct street access, there is also access as well as reception services available through the premises of the adjoining insurance agency.

[Exhibit P-4]

As noted above, through his counsel respondent admitted his lack of candor to the court, but denied that he had assisted a non-attorney in activities that constituted the unauthorized practice of law. Rather, respondent admitted that he violated RPC 7.5 (a) and (c) (firm letterhead and names) and RPC 5.3 (supervising non-lawyer assistants) which, in his counsel's view, more accurately reflects what occurred.

In his answer, in addition to enumerating twelve affirmative defenses and nine mitigating factors, respondent contended that the ethics proceeding raised federal constitutional issues, citing, without any basis, the fourth, fifth, sixth and fourteenth amendments. Under R.1:20-4(e), all constitutional arguments must be reserved for the Supreme Court.

* * *

The DEC determined that respondent's statement to the court "that he did not know how the name 'Paul Falcon Esq.' came to appear on his pre-printed checks was a complete and total falsehood and a clear violation of the duty of candor owed toward the tribunal." The DEC concluded that respondent's answer on whether he had signed the check also evidenced a lack of candor, in violation of RPC 3.3(a) [mistakenly cited as RPC 3.3(b)].

Furthermore, the DEC determined that respondent allowed a non-attorney to prepare and sign pleadings in his name and enabled this individual to hold himself out as an attorney by permitting him to use the designation "Esq." on respondent's check, as a joint account holder. In the DEC's

view, these acts demonstrated that respondent assisted another in the unauthorized practice of law, in violation of RPC 5.5(b).

A majority of the hearing panel recommended that respondent receive a reprimand and be required to attend continuing legal education classes for three years. The public member dissented, believing that respondent should be disbarred. Recognizing the discrepancy between her opinion and that of the panel majority, however, the public member suggested a three-year suspension as a compromise.

* * *

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

As noted above, respondent admitted that check #640 was not the first check used in the series. Furthermore, respondent admitted that he knew about the pre-printed checks and that he misrepresented that fact to the court, in violation of RPC 3.3(a) and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation).¹

Respondent was also guilty of assisting another in the unauthorized practice of law. Falcon was not an attorney. Although there is no indication in the record that Falcon drafted other pleadings or met with clients, he clearly held himself out as an attorney on the checks. By allowing Falcon's name to be on his business account checks, respondent violated RPC 5.5(b).

In addition, respondent adopted a pleading drafted by a lay person without respondent's instruction or supervision. Furthermore, one of the allegations of the complaint, which respondent

¹Although a violation of RPC 8.4(c) was not alleged in the complaint, the facts supporting a finding of such a violation are the same as those supporting a finding of a violation of RPC 3.3(a).

admitted, states that “[o]n or about June of 1993, Respondent allowed a friend and business associate, Paul Falcon, to file a pleading designating Respondent as Mr. Falcon’s attorney and allowing Mr. Falcon to sign Respondent’s name to same.” (Emphasis added). The admission that respondent “allowed” Falcon to sign and file the pleading is contrary to respondent’s contention that he did not know about Falcon’s actions and further confirms that respondent violated RPC 3.3(a), RPC 5.5(b) and RPC 8.4(c).

The Board rejected respondent’s counsel’s contention that RPC 5.3 and RPC 7.5 more appropriately cover the conduct in question. There is insufficient basis in the record to find violations of either of these rules, which were not charged in the complaint.

The only issue remaining is the appropriate level of discipline. In In re Bonnano, 135 N.J. 464 (1994), the attorney hired an individual to work for him as a legal assistant. The individual claimed that he attended law school and was a candidate for the bar examination. Bonnano knew that his assistant was not a member of the New Jersey bar. Nevertheless, the assistant worked unsupervised on a number of client matters, holding himself out and being perceived by others as an attorney. Ultimately, it was learned that the assistant had appeared at a deposition and an arbitration hearing as an attorney, signed retainer agreements, failed to timely appeal an arbitration award, forged documents and embezzled approximately \$32,000 in client funds. Bonnano received a reprimand for aiding in the unauthorized practice of law, failure to supervise his assistant’s activities, gross neglect in one matter and letterhead violations. Also relevant is In re Silber, 100 N.J. 517 (1985). There, the attorney’s law clerk, who was not a member of the bar, negotiated with opposing counsel and appeared in court on a client’s behalf, without the attorney’s knowledge. Upon learning of the law clerk’s activities, the attorney did not notify the court and subsequently


allowed a proposed order, identifying his law clerk as an attorney, to be signed. The attorney received a reprimand.

Here, respondent's conduct was more serious. Although there is no indication that Falcon represented clients or drafted documents other than one pleading in his own behalf, through the designation "Esq." on respondent's checks Falcon held himself out as an attorney, with respondent's knowledge and tacit approval. What makes this matter worse than Bonnano and Silber is that respondent knew about Falcon's misconduct and took no steps to prevent it. When that behavior is coupled with respondent's misrepresentation to the tribunal about the check, a brief term of suspension is appropriate.

In view of the foregoing, the Board unanimously determined to suspend respondent for a period of three months for violations of RPC 3.3(a), RPC 5.5(b) and RPC 8.4(c). Prior to reinstatement, respondent should be required to complete the skills and methods courses offered by the Institute for Continuing Legal Education. In addition, the Office of Attorney Ethics is to conduct an audit of respondent's attorney books and records.

The Board further determined that respondent be required to reimburse the Disciplinary Oversight Committee for administrative costs.

Dated: 11/12/57

By: 
Lee M. Hymerling
Chair
Disciplinary Review Board

SUPREME COURT OF NEW JERSEY

**DISCIPLINARY REVIEW BOARD
VOTING RECORD**

**In the Matter of Michael J. Chulak
Docket No. DRB 97-236**

Argued: September 18, 1997

Decided: November 18, 1997

Disposition: Three-Month Suspension

Members	Disbar	Suspension 3 Months	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:		9					

Robyn M. Hill 12/15/97
Robyn M. Hill
Chief Counsel