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SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 95-386

IN THE MATTER OF

LARRY PLUMMER

AN ATTORNEY AT LAW

Decision

Argued: April 17, 1996

Decided: December 9, 1996

Michael Ventura appeared on behalf of the District XII Ethics Committee.

Respondent appeared pro se.

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 an admonition filed by the District XII Ethics Committee (hereinafter "DEC"), which the Board determined to bring on for hearing. The complaint charged respondent with violations of RPC 1.1(a) (gross neglect), RPC 3.3 (false statement of material fact to a tribunal) and RPC 3.5(c) (conduct intended to disrupt a tribunal).

Respondent was admitted to the New Jersey bar in 1983. He was privately reprimanded on December 13, 1989 for unethical conduct in two matters, consisting of failure to appear for scheduled court dates due to scheduling conflicts.

Respondent represented Cornelius Ferguson on a post-conviction relief ("PCR") motion. The scheduling of oral argument on that motion had been delayed over a period of several months through no fault of respondent or of the judge to whom the matter had been assigned for disposition. Immediately upon the judge's assignment to the matter, she scheduled hearing on the motion for April 19, 1993. She had made substantial efforts to schedule the matter quickly because of the long delay the case had suffered. Respondent did not appear on that date. At some point shortly thereafter, the judge received a telephone message that respondent had been ill. She, therefore, accepted that message as an after-the-fact adjournment request and rescheduled the matter for the following week.

On at least four more occasions following the originally scheduled argument date, respondent failed to appear before the judge. The judge testified that, following respondent's initial telephone message indicating that he had been ill, her chambers began receiving what she described as "wild stories," the most notable of which was that he had been kidnapped and held captive in a "crack house" in Harlem. The judge further testified that, on each occasion that the matter had been scheduled, the defendant, respondent's client, had been transported to the courthouse from the jail. Each time the defendant complained to the judge that he and his family had been attempting to reach respondent to discuss his matter, to no avail. The last time the matter was scheduled, respondent's client finally advised the judge that he no longer wanted respondent to represent him.

Thereafter, the judge scheduled a hearing one more time for May 5, 1993. The specific purpose of that hearing was to require respondent to appear before the court to explain his prior unexcused absences. The judge had previously notified respondent's office that she would hold respondent in contempt, should he again fail to appear. Although respondent did appear before the court on that date, he was forty-five to sixty minutes late. When the judge questioned him about the reason for his tardiness, respondent replied that he had been delayed in the courthouse lobby, where he had been waiting for an elevator to take him to her courtroom on the eighth floor. The judge believed respondent's excuse to be untruthful and questioned why he had not simply climbed the stairs to her courtroom. He replied that he had chosen not to do so.

During the hearing, when the judge confronted respondent with his repeated unexcused absences, respondent recounted somewhat bizarre stories. In one story, his car had been disabled on the George Washington Bridge; although he was able to repair it himself, he then got lost in Harlem, where he knocked on the door of a "crack house" in order to get directions and where he was ultimately held captive for several days. Respondent never reported the incident to the police. To explain another unexcused absence, respondent related an incident of having been run off the road by a phantom vehicle, resulting in the disabling of his own car; he had fixed the damage to the wheel well himself, but decided that it was not safe for him to drive to the courthouse. Respondent did not report the incident to the police either.

The judge testified that her years of experience led her to believe that respondent was under the influence of cocaine or some other illicit drug, when he appeared before her. Specifically, she observed that respondent's eyes were bloodshot, his speech was slurred and he was swaying, sniffing and touching the side of his nose. She testified, "I was embarrassed for

him. I was concerned that the persons who were present in the courtroom would see an attorney before the court in such a condition." Although the judge specifically confronted respondent with her suspicions, he denied that he was under the influence of any narcotics or otherwise impaired.

At the conclusion of the May 5, 1993 hearing, the judge advised respondent that she did not believe his stories and that she intended to report his conduct to the disciplinary authorities. Respondent took that opportunity to criticize the court and the system for having delayed the disposition of the motion. Although the judge assured respondent that the delay was inadvertent, respondent insisted that it was the product of a design to deprive his client of due process.

Respondent perpetuated that allegation throughout his answer to the ethics complaint. In fact, in his answer, respondent steadfastly maintained that he was not under the influence of any narcotic on May 5, 1993 and that any substance abuse in which he engaged "occurred after, and largely because of the accusations contained in this matter." Respondent submitted his answer on or about March 13, 1995, three months before the DEC hearing in this matter and more than one year after he completed in-patient therapy for drug abuse.

By the time respondent appeared before the DEC in June 1995, he had become contrite and more forthcoming. He admitted that all of the excuses he had given the judge for his absences were lies. He confessed that he was unable to appear each time because he was under the influence of cocaine, to which he had been addicted for some time. Although he denied taking any narcotics on May 5, 1993, respondent admitted that he had done so for several days earlier (when he was, indeed, at the "crack house", albeit voluntarily) and that, when he appeared before the judge on the date, he was likely still under the influence of those drugs.

To address his drug abuse problem, respondent voluntarily entered an in-patient drug rehabilitation program on November 7, 1993, which he successfully completed. Thereafter, he continued with out-patient therapy for a period of one year and still continues to attend Narcotics Anonymous meetings on at least a weekly basis. During the time that respondent remained in in-patient therapy and through January 1994, he closed his practice and discontinued his office telephone service. Although some of his clients were able to reach him at home at some point during that period, he admitted that he had not given his home telephone number to all of his clients. Therefore, it would have been impossible for those clients to reach him during that period of time.

* * *

The DEC found respondent guilty of all charges. However, the DEC found that respondent had been "sincerely candid and contrite . . . [and] not the same man who appeared before [the judge] on May 5, 1993." Hearing panel report at 4. The DEC noted that, "were it not for the fact that this matter had proceeded to formal complaint, the panel would have recommended diversion in lieu of discipline. Addiction to narcotics is an illness and should be address accordingly." The DEC unanimously recommended that respondent be admonished for his misconduct. The DEC further recommended that respondent be "monitored" for some unspecified period and that he produce proof that he "continues to counsel as a result of his addiction."

* * *

Following a de novo review of the record, the Board is satisfied that the DEC's findings of unethical conduct are clearly and convincingly supported by the record. Respondent not only lied to the court on several occasions by way of telephone messages, but he also perpetuated his lies directly to the court on May 5, 1993. Moreover, respondent's unexcused absences caused the needless expenditure of valuable court time and resources and deprived his client of a more speedy adjudication of his PRC application. The Board, thus, agreed with the DEC that respondent violated RPC 1.1(a), RPC 3.3 and RPC 3.5(c). The Board also found a violation of RPC 8.4(c) for respondent's misrepresentations to the court and RPC 8.4(d). Although respondent was not specifically charged with a violation of these RPCs, the factual allegations of the complaint provided sufficient notice to respondent of such charges. Moreover, those issues were litigated during the DEC hearing without objection from respondent.

Respondent was less than candid with the DEC. Specifically, in his answer, respondent denied that he ever lied to the judge and further maintained that his ingestion of illegal substances occurred as a result of the judge's complaint to the disciplinary authorities. Moreover, in his answer, respondent accused the presenter of intentionally distorting certain admissions made after the presenter lulled him into believing that his matter could be resolved in a "more reasonable fashion." Exhibit R-1. Respondent did not, however, file his answer to the ethics complaint at a time when he was under the influence of any narcotics. Indeed, by that date (March 13, 1995), he had successfully completed a two-week in-patient drug rehabilitation program as well as a one-year out-patient program. Hence, his claim that he lied to the judge

only because he was under the influence of narcotics lacks credibility, given his lies to disciplinary authorities long after he had overcome his addiction.

Respondent's conduct in this matter was serious. Similar misconduct has generally resulted in discipline ranging between a reprimand and a term of suspension. See In re Marlowe, N.J. (1990) (citation unavailable) (attorney publicly reprimanded where, in order to obtain an adjournment in a domestic violence matter in which he was a party, he sent a letter to the trial judge containing a deliberate misrepresentation that opposing counsel had consented to the adjournment); In re Johnson, 102 N.J. 504 (1986) (attorney suspended for three months for misrepresenting to a trial judge that his associate was ill in order to obtain an adjournment of a trial). See also In re Downer, 127 N.J. 168 (1992) (attorney publicly reprimanded for, among other things, misrepresenting to a court clerk his reasons for not appearing in a court matter); In re Mazeau, 122 N.J. 244 (1991) (attorney publicly reprimanded for making a false statement of material fact in a brief submitted to a trial judge); In re Kernan, 118 N.J. 361 (1990) (attorney suspended for three months for filing a false certification in his own matrimonial matter).

"[L]ying to a judge — no matter how white the lie — can never be lightly passed-off. The destructive potential of such conduct to the justice system warrants stern action." In re Johnson, 102 N.J. at 511.

A five-member majority of the Board determined to impose a reprimand and to require respondent to undergo random drug-testing, supervised by the Office of Attorney Ethics, for a period of three years. Four members dissented, voting for a three-month suspension. In the

view of the minority, respondent has not demonstrated contention and an understanding of the impropriety of his action. The minority is convinced that respondent has not reformed his ways.

The Board further determined to require respondent to reimburse the Disciplinary Oversight Committee for appropriate costs.

Dated: 12/5/96

LEE M. HYMERLING
Chair
Disciplinary Review Board