

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 94-135

IN THE MATTER OF :
:
BENJAMIN A. POREDA, :
:
AN ATTORNEY AT LAW :
:

Decision and Recommendation
of the
Disciplinary Review Board

Argued: June 22, 1994

Decided: September 27, 1994

Nitza I. Blasini appeared on behalf of the Office of Attorney Ethics.

E. John Wherry 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 on a recommendation for public discipline filed by the District VII Ethics Committee ("DEC"). The formal complaint charged respondent with violations of RPC 8.4(b) (committing a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects), RPC 8.4(c) (engaging in conduct involving dishonesty, fraud, deceit or misrepresentation) and RPC 8.4(d) (engaging in conduct that is prejudicial to the administration of justice).

Respondent was admitted to the New Jersey bar in 1957. He has no prior disciplinary history.

The essential facts are not disputed. During the early-morning hours of March 14, 1992, respondent was stopped by a police officer in Morrisville, Pennsylvania, for allegedly failing to stop for a red traffic signal. At that time, respondent did not produce a valid insurance identification card. In fact, at the time he was stopped, respondent was driving a vehicle that he had purchased only two or three days earlier, which replaced his older, insured vehicle. However, at that point, he had not yet notified his agent or insurance carrier of this change and, therefore, had not obtained a corrected or valid identification card.

The police officer issued respondent a summons for driving an uninsured vehicle. Thereafter, on January 11, 1993, respondent appeared at the scheduled hearing on that citation. Prior to his matter being called, respondent approached the officer who had issued him the citation and produced an insurance identification card, ostensibly showing that his vehicle was insured on the date the citation was issued. The police officer, together with respondent, then appeared before the judge for hearing on the matter. At that time, the officer represented to the court that respondent had produced what appeared to be a valid insurance identification card for the date in question. The officer announced his intention to verify the existence of the insurance. Respondent remained silent during the officer's representations to the court. At that point, the charge was apparently dismissed.

The police officer's subsequent investigation revealed that respondent's vehicle had not been insured on March 14, 1992. In

addition, he learned that the broker identified on the insurance card had not issued the card. Similarly, Rutgers Casualty Insurance Company advised that it had not issued the card to respondent and, further, that the policy number appearing on the card was not the type of number that would be issued to a legitimate insured. See Exhibit 2.

As a result of the officer's investigation, respondent was charged, in a criminal complaint, with forgery and/or possession of a forged insurance identification card, a misdemeanor of the first degree. See Exhibits 3, 4 and 5. (According to the OAE presenter, such a violation in New Jersey would be considered an indictable offense). 1T25.¹

Thereafter, respondent pleaded guilty to the charges and was admitted into the Accelerated Rehabilitative Disposition Program ("ARD"), which is similar to New Jersey's Pretrial Intervention Program ("PTI"). There appear to be some notable differences between the two programs. Specifically, in order to enter ARD in Pennsylvania, one must first enter a guilty plea to the charges. In addition, upon a candidate's successful completion of a twelve-month "probationary" period, all charges are dismissed and automatically expunged. The violator need not file a separate action for expungement upon successful completion of the program. It appears that respondent has already successfully completed the program.

¹ 1T refers to the DEC hearing transcript of January 24, 1994.

Respondent essentially admitted all of the allegations of the ethics complaint. He testified that he had prepared the insurance identification card immediately prior to his court appearance. He had obtained a blank card from an unidentified friend, after his broker refused to issue him one. Apparently, respondent approached his broker sixty to seventy-five days after he was issued the citation to request that he be provided with an insurance card for March 14, 1992. Respondent's agent, however, advised him that, because he had waited more than thirty days beyond the purchase of the new vehicle to notify the carrier of the change, the carrier would not honor its contract of insurance and the broker could not issue respondent a back-dated insurance identification card. Respondent understood this to mean that he was not insured on March 14, 1992, although, in reality, that was probably not the case.

While respondent admitted the allegations of the complaint, he maintained, in mitigation, that his actions were attributable to some extent to a multitude of personal problems he was experiencing, culminating in severe depression and ultimately resulting in his involuntary commitment to Helene Fuld Hospital for a twenty-eight day period between July and August 1993. More specifically, respondent testified that, in or about April 1989, he underwent a right hip replacement, after several years of pain and disability. The surgery precluded him from ever again playing tennis, which had been more than a hobby for him for many years. Apparently, respondent had competed in many tournaments since approximately 1955 and had become a well-known and respected

player. He testified that his inability to play tennis any longer seriously affected his self-image. He began to come to the realization that he was getting older. Thereafter, in September 1992, respondent underwent a left hip replacement, further contributing to his negative self-image. In addition, respondent's wife of over thirty years suddenly left him and moved to another state, leaving virtually no information as to her whereabouts. While it is not clear exactly when this occurred, it appears that respondent and his wife were already separated at the time he was issued the summons. The divorce became final in September 1992, several months before his court appearance of January 1993. Respondent, as well as two other witnesses, testified that the divorce had devastated him. He began to feel as if he had completely lost any semblance of a support system. To further compound matters, at some point after the divorce respondent was compelled to sell the family home, as part of the divorce settlement. Again, despite everyone's best efforts to pin down more exact dates, it is not clear when, in relation to respondent's misconduct, the forced sale of the house occurred.

All of those circumstances notwithstanding, respondent admitted that, at the time that he prepared the false insurance card, he understood his conduct to be wrong. He further admitted that he presented the card to the police officer hoping that he would accept it as valid and that the hearing would not be necessary. It was his specific intent to have the charges dismissed. Respondent further admitted that, at the time he

submitted the fraudulent identification card, he understood his actions to be "wrong, criminal, stupid and fraudulent." 1T45. He maintained that his behavior was, nevertheless, aberrant, unlikely to be repeated, and that he was currently competent to continue practicing law.

As of the date of the DEC hearing, respondent had apparently consulted a physician on at least one occasion. While that doctor prescribed some medication for him, respondent chose not to fill the prescription because he did not believe that he needed it to function properly. He further testified that he has returned to work seven days a week and has experienced no problems keeping pace or otherwise coping with his practice. He continues to cater to what he describes as a working-class, largely Polish-speaking clientele, from which he earns a modest living.

Respondent's daughter, Jacqueline Poreda, also testified before the DEC. Ms. Poreda has lived with her father her entire life. She essentially confirmed the many stressors in her father's life, though she was unable to date the events more precisely. Ms. Poreda did testify, however, that her father had become irrational soon after her mother had left, a situation that had worsened after the divorce. More specifically, she described respondent as doing "a million things at once," not sleeping, swearing, talking to himself in the middle of the night and driving recklessly, as if to endanger himself. Although Ms. Poreda attempted to persuade respondent to seek treatment, he steadfastly refused, insisting that he was fine. As she grew more concerned, she contacted the

Helene Fuld Crisis Center and ultimately arranged for his involuntary commitment. She now describes him as rational and in control, although she believes that he is currently taking prescribed medication.

The only other witness to testify before the DEC was William Stoner, a longtime friend of respondent and fellow tennis competitor. Mr. Stoner's testimony basically confirmed that of both respondent and Jacqueline Poreda. He further testified, however, that, shortly before respondent was hospitalized at Helene Fuld, respondent's unusual behavior sometimes took the form of missing appointments with clients or leaving the office for short errands that invariably turned into long absences, leaving Stoner, who happened to be visiting, to answer phones and greet clients. He, nevertheless, described respondent now as much better, albeit not "one hundred percent."

Respondent also presented medical records from Helene Fuld relative to his period of commitment. Those records show an admitting diagnosis of bi-polar disorder and consist of nurses' observation notes and perhaps some therapist's notes, although it is difficult to distinguish between the two. (The various notes make several references to alcohol abuse and excessive gambling, although respondent made no attempt to link his misconduct to those abuses).

Finally, at the suggestion of the DEC, respondent submitted the report of Dr. Neil S. Kaye, M.D., ostensibly for the purpose of evaluating his current ability to practice law. Dr. Kaye opined

that respondent is currently capable of practicing law, despite his illness and his refusal to take prescribed medication. However, Dr. Kaye warned that "mandatory monitoring of his mental status and/or performance in the legal arena are both to be considered in disposing of his case" and that respondent should refrain from drinking alcohol, as it will exacerbate the underlying bi-polar disorder. Exhibit R-1 at 5. Finally, Dr. Kaye observed that the "chronology" (presumably of the events leading up to respondent's misconduct) "suggests that his behavior in terms of forging the insurance card was at least partially influenced by his mental illness." However, Dr. Kaye went on to state, a "review of records from that time period might allow a more definitive conclusion in this area." Id. at 4.

Arguing that respondent's personal circumstances constituted substantial mitigation, his counsel urged the imposition of a private reprimand, as opposed to public discipline. The presenter, in turn, took the position that respondent's personal circumstances, including the bi-polar disorder (assuming it was active at the time of the misconduct), did not prevent him from knowing what he was doing or from appreciating the wrongfulness of his conduct. The presenter, therefore, urged the imposition of public discipline.

* * *

The DEC found that respondent's presentation of a forged insurance identification card to the police officer constituted an attempted act of fraud, in violation of RPC 8.4(a). The DEC further found that respondent's conduct constituted a criminal act that reflects adversely on his honesty, in violation of RPC 8.4(b). In addition, the DEC found that respondent's forgery and presentation of the card violated RPC 8.4(c). Finally, because respondent's conduct occurred in the context of a pending judicial proceeding and because respondent presented the forged card in anticipation of securing a personal benefit "by perverting the integrity of that proceeding," the DEC found that respondent's actions were "inimical and prejudicial to the administration of justice," in violation of RPC 8.4(d). Hearing Panel Report at 6.

Although the DEC recognized that respondent was worthy of compassion "as a result of his long, unblemished career of providing legal services to his community, and as a result of the plainly apparent health problem with which respondent must grapple," it nevertheless determined that the "public nature" of respondent's misconduct required the imposition of public discipline. Id. at 6-7. The DEC further observed:

. . . although we are respectful of respondent's acceptance of responsibility for his acts, the Committee Hearing Panel believes that respondent has not yet confronted and accepted the need to control those health factors identified by his own expert, which may yet impact adversely on him and on the public he serves. We recommend that the Disciplinary Review Board place considerable weight on these factors in determining what measure of discipline should be imposed, and on what conditions.

[Id. at 6-7]

CONCLUSION AND RECOMMENDATION

Following a de novo review of the record, the Board is satisfied that the DEC's conclusion that respondent acted unethically is fully supported by clear and convincing evidence.

Respondent admitted all of the violations, with the exception of RPC 8.4(a), which was not charged in the complaint. The proofs, however, show a clear violation of that rule as well.

Respondent's misconduct was serious. Not only did he forge a document, but he also presented it to a police officer and to a court with the specific intent to mislead both to believe that he carried valid insurance at the time of the offense and with the ultimate intent that the charges against him be dismissed. Moreover, respondent clearly planned his course of misconduct, as evidenced by his admission that he obtained a blank card from a friend, after his broker refused to issue him a backdated one. Respondent also involved a third party in his wrongdoing — the unidentified friend who supplied the blank card.

Discipline in cases involving forgery of documents is ordinarily a period of suspension. See In re Yaccavino, 100 N.J. 80 (1985) (attorney suspended for three years for creating two fictitious orders of adoption and superimposing on them the signature of a judge); In re Kushner, 101 N.J. 397 (1986) (three-year suspension for filing a false certification in a civil matter to induce a court to grant relief for the attorney's own benefit);

In re McNally, 81 N.J. 304 (1979) (two-year suspension for forging the name of the sheriff on a deed of foreclosure and then witnessing the forged instrument, which the attorney later recorded); and In re Mark, 132 N.J. 269 (1993) (attorney suspended for three months for preparing, backdating and submitting to the court two letters to his adversary transmitting expert reports).

Respondent's conduct is somewhat distinguishable from that in Mark to the extent that, at the time that attorney Mark prepared and submitted the forged letters, he believed that the information contained therein was true. Here, on direct examination, respondent testified that he believed that his vehicle was insured at the time of the initial stop. On cross-examination, however, respondent admitted that his broker informed him that his vehicle would not be considered insured during the thirty-day period following the purchase of the new car because he had reported the acquisition well beyond that thirty-day period. He testified, therefore, that he did not believe that he could prove that his vehicle was insured when he was initially stopped and, hence, both when he forged the identification card and when he presented it to the police officer and the court. His misconduct, thus, was not based upon a reasonable belief that he was insured. Had he so believed, he could simply have produced the original policy of insurance before the court to prove continued coverage on an "after-acquired" vehicle.

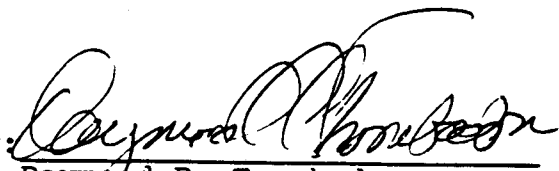
Nevertheless, the Board is not convinced that respondent's misconduct should be met with a long term of suspension because of

the numerous compelling mitigating circumstances present in this matter. While it is not clear from the record whether respondent's illness affected his judgment to any extent (his own expert was equivocal on that point), there was certainly enough lay testimony from persons who were close to respondent to reach the conclusion that his personal problems may have contributed to his poor exercise of judgment in this matter. In addition, respondent has enjoyed an unblemished lengthy legal career and well serves a community that might not otherwise be serviced. Finally, while he may not have been quick to accept the fact that he continues to suffer from an illness that needs attention, respondent readily admitted the wrongfulness of his conduct and did not seek to avoid its consequences by advancing any claim of diminished capacity because of that illness. There is no reason to believe that respondent's conduct was more than a single instance of aberrant behavior, unlikely to be repeated.

Accordingly, the Board unanimously recommends that respondent receive a three-month suspension. One member did not participate.

The Board further recommends that respondent be required to reimburse the Ethics Financial Committee for administrative costs.

Dated: 9/27/1994

By: 
Raymond R. Trombadore
Chair
Disciplinary Review Board