SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 08-096
District Docket Nos. XIV-04-235E
and XIV-05-373E

IN THE MATTER OF	
CONSTANCE L. KOSUDA	
AN ATTORNEY AT LAW	

Decision

Argued: June 19, 2008

Decided: July 31, 2008

Janice Richter appeared on behalf of the Office of Attorney Ethics.

Respondent did not appear, despite proper service.

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

This matter came before us on a recommendation for discipline filed by the District IIIB Ethics Committee ("DEC"). Following the dismissal of a criminal indictment against respondent (charges of insurance fraud, theft by deception and conspiracy), the DEC filed a complaint charging her with

violating RPC 3.3(a)(1) (knowingly making a false statement of material fact or law to a tribunal) and RPC 8.4(c) (misrepresentation). The DEC recommended a suspension, but did not specify its duration. We find that a censure is the proper discipline for respondent's misconduct.

Respondent was admitted to the New Jersey bar in 1982. At the relevant times, she practiced law with the firm of Friedman and Associates, in Toms River, New Jersey.

Respondent has no history of discipline. The New Jersey Lawyers' Fund for Client Protection report lists her as retired since May 21, 2001. She currently resides in Las Vegas, Nevada.

Respondent did not appear at the DEC hearing. She left the following message on the panel chair's answering machine:

> Hello, this is Constance Kosuda. I'm returning your call. . . . I am appearing pro se. I have no intention of being there in person. I may be entitled to special accommodations due to the American Disability Act because I am receiving Social Security Disability and other than that, if you want to pay for my expenses and travel, I'll show up if I have an advocate there to protect me from further harassment from the legal system in New Jersey.
>
> [T37.][1]

[1] T refers to the December 13, 2007 DEC hearing transcript.

Her informal verified answer to the complaint added that she had suffered a nervous breakdown in 2000, "as a direct result of the overwhelming illegalities and duplicity of the Friedman firm, concerning me personally, other associates within the firm, and many of the clients. To date, I remain disabled, and continue to receive Social Security Disability benefits."

In a February 19, 2008 letter to us, respondent stated further:

> 1. I am a DISABLED senior citizen, on fixed income, and was unable to attend the Hearing, as I had previously informed the Board.
> 2. I further requested protections under the ADA with respect thereto, and no response was ever made to this request.

As a result of respondent's assertions, Office of Board Counsel wrote to the DEC panel chair, the OAE presenter, and respondent, asking what accommodations, if any, had been made for respondent. On June 6, 2008, the OAE faxed a letter to Chief Counsel stating that, on two occasions, the OAE notified respondent of her right to have appointed counsel and how to obtain appointed counsel if she was indigent and could not retain an attorney (December 4, 2006 letter serving the complaint and November 16, 2007 letter scheduling the hearing). Moreover, the OAE's letter to Chief Counsel noted that, to accommodate

respondent's disability and her residency in Nevada, she was offered the option to testify via telephone.

Given the OAE's representations, it is clear that the DEC attempted to accommodate respondent's circumstances. Apparently, respondent chose not to avail herself of these accommodations. We determined, thus, to proceed with our review of this matter in respondent's absence.

The complaint alleged that respondent was responsible for handling workers' compensation claims, including hundreds of claims filed by Fluid Packaging, Inc. (Fluid) employees, in anticipation of the closing of that business. From 1998 to 2000, the Friedman firm handled approximately 350 workers' compensation claims. The majority of the Fluid settlements were known as "section 20" settlements, that is, settlements that ended the litigant's rights to future claims against the company.

The Workers' Compensation Act at N.J.S.A. 34:15-20 provides as follows:

> In case of a dispute over or failure to agree upon a claim for compensation between employer and employee, or the dependents of the employee, either party may submit the claim, both as to the questions of fact, the nature and effect of the injuries, and the amount of compensation therefor according to the schedule herein provided, to the Division of Workers' Compensation, as prescribed in article 4 of this chapter (section 34:15-49 et seq.). After

> a petition for compensation or dependency claims has been filed, seeking compensation by reason of accident, injury or occupational disease of any employee, and when the petitioner is represented by an attorney of the State of New Jersey, and when it shall appear that the issue or issues involve the question of jurisdiction, liability, causal relationship or dependency of the petitioner under this chapter, and the petitioner and the respondent are desirous of entering into a lump-sum settlement of the controversy, a judge of compensation may with the consent of the parties, after considering the testimony of the petitioner and other witnesses, together with any stipulation of the parties, and after such judge of compensation has determined that such settlement is fair and just under all the circumstances, enter "an order approving settlement." Such settlement, when so approved, notwithstanding any other provisions of this chapter, shall have the force and effect of a dismissal of the claim petition and shall be final and conclusive upon the employee and the employee's dependents, and shall be a complete surrender of any right to compensation or other benefits arising out of such claim under the statute. . . .

The Friedman firm paid respondent a salary plus fifteen percent of the attorneys' fees for each of the workers' compensation cases that she resolved. The firm received the other eighty five percent of the fees. Respondent complained that, as of the date of her answer to the formal ethics complaint (December 6, 2006), she had not received the percentage of the fees that she had been promised.

The gravamen of the complaint is that respondent misrepresented to the workers' compensation judge and opposing counsel, Stephen Leitner, that each of the Fluid clients had undergone a medical examination. Based on these representations, many cases were settled. The Friedman firm received reimbursement for the costs of medical examinations that the court and opposing counsel believed had been expended. The costs for the medical exams varied between $100 to $200 per client. Many of the clients, however, had not undergone any medical examination. Therefore, the firm did not pay for the exams.

Of the "hundreds" of claims filed by Fluid employees, the complaint named "as an example" only eleven claimants: Diane Armstrong, Ralph Avellino, Deborah Cerrato, Beverly Gomez, Wilfred Gomez, Melica Jokie, Janet Klause, Diane Russomanno, Robin Smith, Maria Vargas, and Frank Zaccaro.

The complaint further alleged that respondent's misrepresentations resulted in the settlement of the cases and the Friedman firm's receipt of funds to which respondent knew the firm was not entitled. Exhibits 20 through 30 include "orders approving settlement with dismissal" (N.J.S.A. 34:15-20) showing that each case settled for $2,400. Costs of $100 were awarded to the Friedman firm for medical fees in all but one case, where

$200 was awarded. The orders also awarded attorneys fees of $480 and additional amounts ($65 or $85) in each case.

Andrea Hayes, an investigator for the New Jersey Division of Criminal Justice, Office of the Insurance Fraud Prosecutor, investigated the matter in connection with the criminal proceedings. Hayes testified at the DEC hearing that she had received a packet from four former attorneys of the Friedman firm, who had reviewed approximately 397 open workers' compensation claims from Fluid. According to Hayes, the attorneys did not believe that the claims were legitimate because, in certain cases, they could find no medical or factual basis for the claims.

As part of her investigation, Hayes interviewed a number of Fluid employees that had filed workers' compensation claims and received settlements. She also subpoenaed doctors' records.

Hayes discovered that, early on, when the claims were filed, respondent ordered medical exams. She added that, later,

> there were no exams, the forms were preprinted,[2] and attorneys didn't even meet with some of the claimants at the end. [Respondent] would pull the file the night before court, go into court and represent to

[2] According to Hayes, the pre-printed forms were workers' compensation forms on which the claimant's injuries had been listed prior to the claimants' coming into the office. In other words, the firm utilized a boilerplate workers' compensation claim petition that required only the completion of the claimant's personal information, which was done pre-diagnosis.

> the Court that exams had been done when in some cases exams had not been done. They had also received a settlement order showing that money was to be paid to the doctors for the exams, and that checks received reflected that disbursement to the doctor when in fact exams had not been done.
>
> [T11-7 to 17.]

Hayes interviewed Cheryl Borzek, a former Friedman employee. The transcription of that interview revealed that Borzek was a workers' compensation secretary employed by the Friedman firm from 1997 to August 2000. Borzek and two other secretaries handled the Fluid claims. According to Borzek, once the filed workers' compensation petitions "came back," she and the other two secretaries would begin scheduling exams, generally with Drs. Tobias and Krengel. The exam reports would be placed into the respective files and respondent would pull the files to review them the day before the cases went to court. In the beginning, if there were no doctors' reports, the client matter would be adjourned until an exam could be scheduled and, presumably, a doctor's report obtained. Borzek stated, "[W]hen it got towards the end . . . if a client did not have an exam, she would just let them go to court anyway. . . . Any case that went to court that day was always settled." According to Borzek, respondent was aware that the exams had not been conducted.

Hayes also interviewed another employee, Jennifer Pienkowski, who verified Borzek's statements. Pienkowski was not involved with the Fluid claims early on, when the claimants were still being sent for medical evaluations. The Fluid claims were treated differently from the firm's other workers' compensation claims, because medical exams were not performed on all of the claimants. Moreover, Pienkowski stated, some of the employees believed that the settlements were "a form of severance pay as opposed to a Workers Compensation claim."

It was Pienkowski's belief that the firm stopped ordering medical exams for the Fluid claimants because the cases were becoming more routine. It was more of a

> get 'em in, get 'em out type thing. Um, a quick open shut. I don't know what the agreement was between Constance and the attorney on behalf of the respondent. Um, but I believe there was an agreement that it was understood they were all going to be settled for a certain amount of money. . . . there was just too many of them, um, at some point.
>
> [Ex.12-7.]

Hayes reviewed the file relating to claimant Diane Armstrong. Exhibit 20, the workers' compensation claim petition for Armstrong, included an order approving settlement that showed a $100 "medical fees and costs" award to the attorney. Armstrong had never been examined by a doctor, however. Hayes

memorialized her May 1, 2002 interview of Armstrong, which provided that, although Armstrong had some minor health problems while working at Fluid, she never sought medical attention.

Hayes's interview further revealed that a co-worker had told Armstrong that several "Mexican workers" had gotten hurt on the job and had consulted with an attorney. The workers had told "the attorney" that the plant was closing. According to Armstrong, "[t]he attorney told the workers to go back and tell everyone else to come to his office." Through the grapevine, Armstrong found out when the Fluid employees were to meet with the attorney. When Armstrong arrived at Friedman's office, there were seventy to eighty other Fluid employees waiting there. They were taken to see an attorney in groups of ten to fifteen people. According to Armstrong, the attorney "'kind of put the idea in your head' that this claim was to recoup for health reasons due to 'many years that they had worked for the company and all those years of standing on your feet.'" Armstrong informed the Friedman attorney that she did not have any health problems. The others in her group, however, were told that they might be asked to see a doctor. Armstrong was never seen by a doctor. When she appeared before the judge with respondent, no one reviewed the settlement figures with her or explained to her that $100 would be deducted from her check as attorney costs (medical fees).

Another employee, Janet Klaus, was of the opinion that the workers' compensation claims against Fluid' were a means for the insurance company "to close out now any future claims against the company."

According to Hayes, her investigation revealed that, during the workers' compensation court hearing, respondent had told the court that the claimants "had been to see a doctor and they had pre-paid the fee for the doctor." As seen below, however, the transcripts of the court proceedings do not specifically bear out Hayes' statement.

Hayes obtained some of the transcripts of the hearings before the workers' compensation judge. According to Hayes, respondent had asked the claimants whether they understood that a $100 deduction was being made to send to the examining doctor and they stated "yes." As to claimant Maria Vargas, Hayes continued, her cost for the medical exam was $200. Respondent had asked Vargas whether she understood that the firm was asking for a $200 reimbursement, the sum that had been sent to Dr. Tobias. Vargas had replied "yes" (Vargas also agreed to an additional $40 towards the interpreter's fee).

At the DEC hearing, however, the panel chair pointed out that the transcripts did not indicate that respondent had represented to the judge that all of the claimants had been

examined by a doctor and that the firm had medical reports. Hayes explained that, although respondent had not specifically made that statement, the claimants had been asked whether they understood that deductions were being made from their settlements to reimburse the firm for payments made to the doctors.

Hayes interviewed Drs. Tobias and Krengel and subpoenaed their records, a random sample of sixty-five claims, out of the 397 Fluid claims handled by the Friedman firm. Hayes's investigation yielded six medical examination reports from Dr. Krengel and one from Dr. Tobias. None of the seven were for the individuals named in the ethics complaint.

Hayes also spoke to an adjuster from the Fireman's Fund Insurance Company, who told her that, had the insurance company known that there were no medical exams, it would not have paid for them.

OAE Disciplinary Investigator Greg Kulinich testified that, during the course of his investigation, he had spoken with respondent, who had provided little information about the ethics charges against her. Respondent told Kulinich that it was Friedman who was "the crook and not her." She claimed that, "because of Friedman she suffered various medical problems, nervous breakdown, and . . . she's currently disabled." Respondent stated that, due

to the stress that she had experienced, she had trouble remembering the events and might be unable to provide him with any details. Respondent told Kulinich that the clients had paid for the medical exam, not the insurance company. She further asserted that she was not the only attorney that would handle workers' compensation claims in the Friedman firm and that everyone "in Friedman's office was lying to her and trying to deceive her and telling her that medical exams were scheduled and they actually weren't."

Kulinich also interviewed Friedman, who stated that he had been involved in the Fluid workers' compensation claims on a very limited basis and only for a short period of time. Friedman told Kulinich that, in "1998-2000", his office had handled approximately 350 workers' compensation claims filed about the time of the Fluid plant closing. In 1997 or 1998, he had hired respondent mainly to handle workers' compensation cases, including the Fluid claims. Friedman explained that he conducted only the initial client interviews of the Fluid employees. He stated that most of the Fluid claims had been were settled for $2,400. The attorneys' fees were twenty percent of the settlement and medical costs were also deducted from the clients' settlements. Friedman stated that the insurance company would

send a check directly to the client and a separate check to the firm for attorneys' fees and costs.

Kulinich obtained a list of all of the Fluid files from Friedman and picked twenty-four files as a random sample for his review. Presumably, the eleven claimants listed in the complaint came from this sample. Only two of the twenty-four files contained medical reports. Both clients were charged $200 for medical bills.

As to the remaining files, six clients were charged $200, nine were charged $100, and the remaining seven were not charged medical costs. According to Kulinich, Friedman's attorney believed that there had been approximately $5,000 in medical costs billed to the insurance company, even though medical exams had not taken place. Kulinich, however, never verified that amount.

Kulinich subpoenaed the records of Drs. Tobias and Krengel relating to the eleven clients listed in the complaint. He asked the doctors to review their files to determine whether medical examinations had been conducted for those eleven individuals. The doctors denied having examined any of the eleven.

Kulinich spoke to the Fireman's Fund attorney, Stephen Leitner, who told him that "he wasn't even aware of medical exams being done in these cases," or that the Fluid claimants

were even being sent to doctors. According to Kulinich, it was "[Leitner's] opinion that they wanted to settle as many of these cases as quickly as they can just to get rid of them." Thus, Kulinich opined, there was a "possibility that they would have settled without a medical exam." The medical fee costs were deposited into the Friedman firm's "disbursement" account.

Kulinich recalled that, following the criminal investigation, Friedman was admitted into a pretrial intervention program (PTI) and the criminal charges against respondent were dismissed.

Respondent's version of events was set forth in her answer to the ethics complaint and in her "February 19, 2008 "Notice of Intent to Appeal." She claimed that she never represented to either the court or to Leitner that each of the group of clients had undergone an exam. To the best of her recollection, her agreement with Leitner was that the insurer would only pay settlements in the cases for which he had received an actual copy of a medical report. She believed that their agreement might have later changed, in that Leitner did not care if he had an actual medical report in his possession. "All of the cases were to be considered settled," she added.

According to respondent, she had written notes on the client files as to whether the clients had attended an exam. On

occasion, she did not have the actual report available because of the sloppy work of her "secretarial/backup staff," delays in getting the reports from the examining physician, or a missed appointment, to which she was not privy, as a result of "clients who had bad memories/ who had missed exams and who didn't want to tell me that they had missed them, so as to delay the receipt of their settlement . . . or other reasons."

Respondent claimed that her three secretaries had told her that all of the clients had been sent for exams. She stated that, during the court proceeding, she had questioned whether the clients had gone to exams and, with the help of a professional interpreter, they all had said yes.

To her "Notice of Intent to Appeal," filed with Office of Board Counsel, respondent attached a copy of a memorandum of law in support of motions to dismiss the indictment filed by her attorney in the criminal matter. According to the preliminary statement, the indictment charged respondent with insurance fraud, theft by deception, and conspiracy. The basis for the indictment was that respondent had defrauded the insurance company out of $100 on eleven occasions, because eleven out of 397 Fluid claimants had not actually undergone medical examinations.

In her brief, respondent maintained that Fireman's Fund had not been defrauded because the insurance company, through its attorney, "knew full well" that there were no reports and, therefore, placed no reliance on the examination reports for settlement purposes. She added that Fireman's Fund's attorney was present when all 397 settlements were put on the record. The eleven cases at issue were in the group of later cases heard by the court.

Respondent further contended that she was "under the misimpression that petitioner's [sic] examinations had in fact been performed for each of the eleven settlements in question," and that she had a "reasonable belief that, although she may not have had reports in her files, the examinations had been performed and the service would have to be reimbursed."

The brief also characterized respondent's representations to the court that the firm was owed costs for the examinations as "inadvertent" and "nothing more sinister than a case of poor claims administration."

In its brief to us, the OAE stated that respondent had made misrepresentations to the court and counsel for Fireman's Fund that the claimants had been examined by a physician and that, as a result, she had permitted the court to reimburse the Friedman firm for medical examinations that had not been conducted. The

OAE also stated that it was unlikely that the court would have awarded funds to the claimants, absent proof that any disability was related to their employment.

The OAE noted that there is a broad range of discipline imposed on attorneys found guilty of lack of candor to a tribunal. In mitigation, the OAE conceded that there was some basis to find that, even in the absence of a medical examination, the insurance carrier would have settled the claims, although it would not have agreed to reimburse costs that had not been expended. Also, the OAE considered that respondent has no prior discipline, resides in Nevada, and is not actively engaged in the practice of law in New Jersey.

The OAE recommended a three-month suspension or such lesser discipline as we deem appropriate.

The DEC determined that, while settling the Fluid workers' compensation claims, respondent misrepresented to the workers' compensation judge and to her adversary that each client had undergone a medical examination. As a result, the Friedman firm received compensation for costs for medical examinations ($100 to $200 per claimant) that were never conducted. Based on respondent's misrepresentations, the workers' compensation judge approved numerous cases for settlement. Thus, the DEC found, respondent's misrepresentations enabled the Friedman firm to

recover funds that respondent knew the firm was not entitled to receive.

The DEC was "incredulous" that respondent's misconduct encompassed "so many instances." The DEC found "particularly disturbing" that respondent's answer did not provide a "probative defense" for her misconduct.

The DEC concluded that respondent's conduct violated RPC 8.4(c) and RPC 3.3(a)(1) and recommended a suspension of no particular length.

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

As indicated above, initially, Friedman met with the Fluid claimants. In order to process the large number of workers' compensation clients, he hired respondent.

At the outset, it appears that the Fluid claims were handled properly. The claimants were sent for medical exams and medical reports were obtained.

At an unspecified point, however, respondent began to take shortcuts with her procedures. Certainly, it was in the insurer's and the firm's best interests to settle the claims quickly and for nominal amounts. As to the firm, it got its fees and costs, including reimbursement of medical fees that the firm never paid.

As to the insurer, under N.J.S.A. 34:15-20, once a claim is settled and approved, the claim petition is dismissed and the settlement is "final and conclusive upon the employee and the employee's dependents and shall be a complete surrender of any right to compensation or other benefits . . . ." Thus, by settling the cases as quickly as possible, the insurer prevented the Fluid employees from filing any future claims, if more serious health problems later arose.

Although the insurer's motive for settling these claims is only an inference drawn from the record, we find that the record supports a finding that Leitner knew that no medical exams were conducted for some of the clients. Therefore, we find no clear and convincing evidence that respondent made misrepresentations to Leitner, as charged in the complaint.

The evidence amply supports a finding, however, that, in eleven matters, respondent elicited misleading testimony from her clients when they said that they understood that either $100 or $200 would be deducted from their settlements to reimburse the Friedman firm for costs the firm incurred for their medical examination/reports. In fact, neither Dr. Tobias nor Dr. Krengel examined any of the eleven claimants. Respondent, therefore, violated RPC 3.3(a)(1) (knowingly making a false statement of material fact to a tribunal) by eliciting false statements from

her clients to mislead the workers' compensation judge that the clients had been examined by a doctor and that, therefore, they had valid claims.

The arguments set forth in respondent's brief in the criminal matter did not persuade us otherwise. It is clear that respondent's misrepresentations to the workers' compensation were not inadvertent. Her former secretary explained that respondent was made aware of the lack of medical exams, before the cases went to court. Moreover, in her answer to the ethics complaint, respondent conceded that her agreement with Leitner changed at some point "so that he really didn't care if he got an actual medical report in his hand – all of these cases were to be considered settled." Finally, although respondent's brief in the criminal matter denied that she had defrauded the insurer, it did address whether she had made misrepresentations to the workers' compensation court, an impropriety that, we find, was established by clear and convincing evidence.

As to the proper quantum of discipline, the OAE correctly noted that there is a broad spectrum of discipline for attorneys who have made misrepresentations to a tribunal. See, e.g., In the Matter of Robin K. Lord, DRB 01-250 (2001) (admonition for attorney who failed to reveal her client's real name to a municipal court judge when her client appeared in court using an

alias, thus resulting in a lower sentence because the court was not aware of the client's significant history of motor vehicle infractions; in mitigation, the attorney disclosed her client's real name to the municipal court the day after the court appearance, whereupon the sentence was vacated); In re Whitmore, 117 N.J. 472 (1990) (reprimand for municipal prosecutor who failed to disclose to the court that a police officer whose testimony was critical to the prosecution of a charge of driving while intoxicated intentionally left the courtroom before the case was called, resulting in the dismissal of the charge; attorney did not have an improper motive and "may not have clearly seen the distinct line that must be drawn between his obligations to the court and his commitment obligation to the State, on the one hand, and, on the other, his feelings of loyalty and respect for the police officers with whom he deals on a regular basis." Id. at 480); In re Clayman, 186 N.J. 73 (2006) (censure for attorney who misrepresented his bankruptcy client's financial condition in his filings with the bankruptcy court to conceal information detrimental to his client's bankruptcy petition through misrepresentation of facts, omissions, incomplete documents and documents that lacked his client's approval; the bankruptcy judge found that the attorney abused the bankruptcy system and the trust placed in him by the court; in

mitigation the Court found no venality or motivation for self-gain); In re Norton and Kress, 128 N.J. 520 (1992) (both the prosecutor and defense counsel were suspended for three months for permitting the dismissal of a charge of driving while intoxicated; although the attorneys represented to the municipal court that the arresting officer did not wish to proceed with the case, they failed to disclose that the reason for the dismissal was the officer's desire to give a "break" to someone who supported law enforcement); In re Kernan, 118 N.J. 361 (1990) (three-month suspension for attorney's failure to inform the court, in his own matrimonial matter, that he had transferred property to his mother for no consideration and failure to amend his certification listing his assets; attorney had a prior private reprimand for engaging in a conflict of interest by representing buyer and seller in a real estate transaction); In re Friedman, 181 N.J. 320 (2004) (six-month suspension for attorney who mishandled a medical malpractice litigation and then made misrepresentations to clients, his adversaries, and the courts to cover up his conduct; the attorney lied to the court, failed to inform the court of the relevant facts, and made false statements to third parties); In re Forrest, 158 N.J. 429 (1999) (attorney suspended for six months for failure to disclose the death of his client to the court, to his adversary, and to an

arbitrator; the attorney's motive was to obtain a personal injury settlement; prior private reprimand for recordkeeping violations and improper withdrawal of a fee); In re Telson, 138 N.J. 47 (1994) (attorney suspended for six months after he concealed a judge's docket entry dismissing his client's divorce complaint, obtained a divorce judgment from another judge without disclosing that the first judge had denied the request, and denied his conduct to a third judge, only to admit to this judge one week later that he had lied because he was scared); In re Cillo, 155 N.J. 599 (1998) (one-year suspension for attorney who, after misrepresenting to a judge that a case had been settled and that no other attorney would be appearing for a conference, obtained a judge's signature on an order dismissing the action and disbursing all escrow funds to his client; attorney knew that at least one other lawyer would be appearing at the conference and that a trust agreement required that at least $500,000 of the escrow funds remain in reserve; two prior private reprimands: one for failure to communicate with a client and one for an improper business transaction with a client); and In re Kornreich, 149 N.J. 346 (1997) (three-year suspension for attorney who, after being involved in an automobile accident, misrepresented to the police, her lawyer and a municipal court judge that her babysitter had been operating her vehicle and presented false

evidence in an attempt to falsely accuse the babysitter of her own wrongdoing; two members of the Court voted for disbarment).

Unlike the above cases that only involved one matter, respondent's misconduct involved eleven clients. In addition, she believed that she stood to realize a pecuniary benefit from the resolution of the matters, that is, an additional fifteen percent of the attorneys' fees, over and above her salary. While we do not find that respondent was the mastermind of the plan, we find that she was instrumental in its execution, but not without the knowledge and possible consent of her adversary. On the other hand, respondent has a clean disciplinary record in her more than twenty-five years at the bar. We note, also, that all criminal charges against her have been dismissed, while Friedman received PTI. It would seem, thus, that Friedman had a more active role in the improprieties in connection with the medical costs.

Although precedent might support a three-month suspension, we find, after balancing the competing mitigating, aggravating, and unknown factors (the true role of all of the participants), that a censure is sufficient discipline in this case.

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

actual expenses incurred in the prosecution of this matter, as provided in R. 1:20-17.

Disciplinary Review Board
Louis Pashman, Chair

By: Julianne K. DeCore
Julianne K. DeCore
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Constance L. Kosuda
Docket No. DRB 08-096

Argued: June 19, 2008

Decided: July 31, 2009

Disposition: Censure

Members	Disbar	Suspension	Censure	Dismiss	Disqualified	Did not participate
Pashman			X			
Frost			X			
Baugh			X			
Boylan			X			
Clark			X			
Doremus			X			
Lolla			X			
Stanton			X			
Wissinger			9			
Total:						

Julianne K. DeCore
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Chief Counsel