SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 01-267

IN THE MATTER OF

STEVEN M. OLITSKY

AN ATTORNEY AT LAW

Decision

Argued: October 18, 2001

Decided: February 6, 2002

Lee A. Gronikowski appeared on behalf of the Office of Attorney Ethics.

Paul W. Bergrin appeared on behalf of respondent.

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

This matter was before us based on a recommendation for discipline filed by special master Bernard A. Kuttner.

Respondent was admitted to the New Jersey bar in 1976. He is presently suspended from the practice of law and cannot be reinstated until all matters pending against him are completed.

The two complaints alleged violations of RPC 1.1(a) (gross neglect); RPC 3.3(a)(1) (false statement of material fact or law to a tribunal); RPC 3.3(a)(4) (offering evidence the lawyer knows to be false); RPC 5.5(a) (unauthorized practice of law); RPC 8.4(b) (commission of a criminal act that reflects adversely on his honesty, trustworthiness or fitness as a lawyer); RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation); RPC 8.4(d) (conduct prejudicial to the administration of justice); R.1:20-20(b)(4) (use of a sign suggesting that a law office is being maintained after a lawyer has been suspended) and R.1:20-20(b)(11) (failure to notify clients of the lawyer's suspension and to advise them to seek other counsel).

* * *

Respondent has a lengthy disciplinary history. In 1993, he received a private reprimand for failure to communicate with a client and failure to prepare a written fee agreement. In 1996, he was admonished for failure to prepare a written fee agreement and failure to inform a client that he would not perform any legal work until his attorney fee was paid in full. He was suspended for three months, effective June 1, 1997, for banking and recordkeeping violations, failure to safeguard property and conduct involving dishonesty, fraud, deceit or misrepresentation, including commingling personal and client funds in his trust account to avoid an Internal Revenue Service levy on his personal funds. In June 1998, he was again suspended for three months, consecutively to his prior suspension, for

misconduct in three matters, including gross neglect, lack of diligence, failure to explain a matter to the extent reasonably necessary to permit the client to make an informed decision about the representation, failure to communicate with a client and failure to provide clients with a written fee agreement. On April 8, 1999, respondent was suspended for six months, retroactive to November 16, 1997, for gross neglect, pattern of neglect, failure to communicate with a client, failure to prepare a written fee agreement, continued representation of a client following termination of representation, and failure to surrender client property on termination of representation. Finally, on July 13, 2000, respondent was suspended for an additional six months, effective May 16, 1998, for lack of diligence and failure to communicate with a client.

* * *

The Bankruptcy Petitions

As set forth above, respondent was first suspended from the practice of law in June 1997. He filed a petition for reinstatement in August 1997. On October 15, 1997, the Court denied the petition, pending the disposition of all ethics grievances and complaints against him. Ernest Ianetti represented respondent in connection with his petition for reinstatement.

On July 9, 1997, the United States District Court for the District of New Jersey ("district court") also suspended respondent.

It is undisputed that, between January 13 and March 12, 1998, respondent signed Ianetti's name as the petitioner's attorney to four bankruptcy petitions and filed them with the bankruptcy court. The petitions were filed on behalf of Anthony Baptiste, Eugene and Jacobed Radin, Patricia L. Mason and Marston and Iona McIntosh.

Ianetti denied having given respondent authority to sign his name on the bankruptcy petitions and denied having represented those clients. According to Ianetti, he first became aware that respondent had signed his name on the petitions when clients telephoned him, stating that respondent had told them that Ianetti was representing them. Ianetti stated that he confronted respondent about the petitions, told him he would not handle the cases and instructed respondent "to straighten the problem out." Ianetti testified that, when respondent did not comply with his instruction, Ianetti appeared before the bankruptcy court, informed the court that he had not agreed to represent those clients and was allowed to withdraw from the cases. It was Ianetti's recollection that there were six, not four, bankruptcy petitions on which respondent had signed his name.

Eugene Radin testified that he had been satisfied with respondent's representation in a prior bankruptcy case. Therefore, according to Radin, when he experienced financial problems in 1997, he again retained respondent. Radin had a receipt for an $860 payment to respondent on October 10,1997, when respondent was already suspended. The receipt was signed "Steven Olitsky by B. Grande." Radin did not recall whether his meeting with respondent occurred on October 10, 1997 or whether he received the receipt from

respondent or from respondent's secretary. However, he was certain that he had met with respondent, at respondent's law office, sometime prior to the February 1998 filing of his Chapter 13 bankruptcy petition. Radin further testified that, when he saw Ianetti's name on the bankruptcy petition, he called Ianetti, who told him that he did not know anything about the petition and was not representing him. Thereafter, according to Radin, respondent told him that "[e]verything is okay, don't worry about it." Radin stated that respondent never told him that he was suspended. The record does not reflect the outcome of Radin's bankruptcy case.

Patricia Mason testified that she retained respondent in April 1997 to file a bankruptcy petition on her behalf. Although she did not remember the exact amount of his fee, she believed that it was $700, paid in two installments, in April and May 1997. The remainder of Mason's testimony was confusing and often contradictory. Initially, she stated that she did not speak with respondent after May 1997. Later, she stated that respondent probably told her, in October 1997, that he had been suspended and that he had not filed a bankruptcy petition. At first, Mason also testified that she learned of Ianetti's representation when she received a copy of her petition in the mail, that she met Ianetti in October 1997 at the bankruptcy court, that Ianetti represented her at the hearing and that she received a discharge after the hearing. However, the bankruptcy petition was not filed until January 1998. Furthermore, as set forth below, respondent testified that another attorney, not Ianetti, represented Mason at the bankruptcy hearing.

Respondent admitted that he signed Ianetti's name on bankruptcy petitions and then filed them. However, he contended that Ianetti had agreed to the procedure so that respondent would not have to return the fees already received. Respondent stated that he and Ianetti arranged for other attorneys to represent the clients at the bankruptcy hearings because Ianetti could not, due to "real bad personal problems." Those attorneys, according to respondent, "appeared in court on...on our behalf because [Ianetti] was basically the one that got them, too, and so, you know, I prepared it, but [Ianetti] was well aware of it."

Respondent acknowledged that, at the time, he realized that what he was doing was unethical. He explained, however, that he was

> mentally out of control. You know, the only livelihood that I had. I didn't want to change it, and I saw certain opportunities where, you know, with these little situations or 'oh, gee, I can get some money,' you know, '[Ianetti's] helping me out,' you know, 'nothing's going to happen.' I mean it sounds stupid and it is stupid, and it's very cavalier and you look back, and it's the dumbest thing I've done, and the thing is...I was meant to be caught because the only reason, and the only way we got caught was that when Anita [another attorney]...when she went in to do the 341 hearing, which is the meeting of creditors, they asked her who she was there to represent and, instead of saying [Ianetti], she said [respondent], at which point the Trustee called in the U.S. Attorney, and it went from there...I know everything I did was wrong, and I shouldn't have done it and I shouldn't have involved other people in it.

Respondent admitted that, after his suspension. he agreed to represent Radin. According to respondent, he put Ianetti's name on the petition, but Ianetti never worked on the case.

With respect to Mason's bankruptcy, respondent testified that he prepared the petition and signed Ianetti's name as the attorney, with Ianetti's consent. According to respondent,

he and Ianetti arranged for another attorney to represent Mason at the confirmation hearing.

Respondent testified that he notified "most," but not all, of his clients of his suspension:

> I didn't want to completely destroy my client base. The ones that I thought I was finished with or like the bankruptcy cases, the ones that were in, that had already been confirmed, I didn't notify them....I tried to use that gray area, that some weren't technically clients yet or had been clients. I didn't really want to cut off my client base because I was a sole practitioner. It was a three-month suspension and from, you know, experience with seeing what happened to other people if you notify, blanketly notify everybody, you know, who you had ever represented, and the next thing you know, you have no clients at all.

Respondent stated that he also feared losing a "pipeline" of bankruptcy case referrals from a Mr. Arena, whom respondent described as "vulture" because, "when people have foreclosures, he swoops down and says, 'I can give you your property. I've got an attorney or two to send you to.'" He testified that he feared losing the "pipeline" of referrals from Arena because "[i]f I come back without this, this is like a third of my practice, if I come back without this, I'm dead, you know. I'm dead in the water, and like a jerk, I did what I did." Respondent denied that he paid Arena for the referrals.

The complaint charged that respondent's conduct with respect to the bankruptcy petitions violated RPC 5.5(a), RPC 8.4(c), RPC 8.4(d) and R.1:20-20(b)(11).

The Johnson Matter

In April 1997, two months before respondent was suspended, Evelyn Johnson retained him to represent her daughter, Cassandra Johnson, in connection with a criminal charge. Respondent told Evelyn Johnson that his fee for representing Cassandra at the bail reduction hearing was $750 and that there would be an additional $750 fee for the arraignment. Evelyn paid the initial $750 to respondent. Respondent was successful in having Cassandra's bail reduced and Cassandra was released from jail on May 5, 1997.

On June 1, 1997, respondent was suspended for three months and, as noted earlier, was never reinstated to the practice of law. Between July 1, 1997 and October 15, 1997, Evelyn paid an additional $500 to respondent to represent Cassandra at the arraignment, scheduled for October 20, 1997.

Evelyn testified that she did not learn that respondent was suspended until "about the third time my daughter went to court and I didn't have no lawyer, and that is why he, the judge, gave me a couple months to find me an attorney." Evelyn did not remember when that occurred, only that she had to find a new attorney by October 1997. Evelyn also testified that, after she learned of respondent's suspension, she requested that he return the $500, which he did sometime in 1998.

Respondent testified that he agreed to represent Cassandra for the bail hearing only and that he told Evelyn Johnson "when [Cassandra] gets indicted to get in touch with me. We were discussing what I would charge her, and we would go from there." With regard

to whether Cassandra Johnson was a client at the time he was suspended, respondent replied, "[a]gain, gray area. I mean, you know, she was leaving money in anticipation of her daughter being indicted and retaining me." At some point, according to respondent, the court ordered him to appear in the case and he handwrote a letter to the court, stating that he had been suspended and that he had not been retained to represent Cassandra for the arraignment.

The complaint charged that respondent's conduct with respect to the Johnson matter violated RPC 1.1(a), RPC 5.5(a), RPC 8.4(d) and R.1:20-20(b)(11).

The Oakes Matter

In 1996, respondent represented Ann Marie and Donald Oakes in a Chapter 13 bankruptcy case. In 1997, the Oakeses had difficulty paying their mortgage. On October 4, 1997, when respondent was already suspended, the Oakeses paid respondent $200 and received a receipt. The signature on the receipt is illegible.

Ann Marie Oakes testified that she and her husband met with respondent at his law office on Saturday, October 4, 1997 and paid $200 to him. Although Ann Marie was unsure as to what respondent intended to do for them, she understood that he would "file again or whatever had to be done for us." According to Ann Marie, respondent told them he would be in touch with them. When she did not hear from respondent, she called his office several times and was told that he was not in the office.

According to Ann Marie, it was not until November 14,1997 that respondent returned her calls and told her he had been suspended. However, Ann Marie's notes of that telephone call were written on an October 6, 1997 letter from respondent stating that he had been suspended. Therefore, Ann Marie must have forgotten about or misunderstood the October 6 letter. However, the record did not explain this discrepancy.

According to Ann Marie, her house was sold in a sheriff's sale because "by the time I had to get another attorney, it was too late, and the second attorney, then when I finally got him, he forgot to call up to cancel the sheriff's sale. He called up the first time, but then he forgot to call up the second time, and the house went on foreclosure."

Ann Marie denied that the $200 paid to respondent in October 1997 was for fees owed for the 1996 bankruptcy petition, as respondent claimed.

Respondent testified that he had filed a bankruptcy petition for the Oakeses in 1996 but that they were not making the payments required by the plan. According to respondent, Ann Marie visited his office after he had been suspended and his secretary told her of the suspension. Respondent testified that, at Ann Marie's request, his secretary drafted a letter to the attorney to the Oakeses' mortgage company. At that time, according to respondent, Ann Marie told his secretary that they still owed him $200 for the work that he had done in 1996 and gave her a check for that amount.

Respondent did not remember if he had notified the Oakeses, prior to his October 6, 1997 letter, that he had been suspended because "if it was confirmed, I'm now out of it, so

even though I'm still on it as her attorney, it's confirmed, and there's nothing for me to do. She just makes her payments."

The complaint charged that respondent's conduct with respect to the Oakes matter violated RPC 1.1(a) , RPC 5.5(a), RPC 8.4(c), RPC 8.4(d) and R.1:20-20(b)(11).

The Wejnert Matter

In March 1997, respondent filed a Chapter 13 bankruptcy petition on behalf of Stephen and Donna Wejnert. By letter dated October 6, 1997, respondent told the Wejnerts that he had been suspended "on June 1, 1997, said suspension to be for three months. Based on this suspension it would be necessary for you to retain counsel to represent you in regard to [sic] pending matter. At this time I cannot recommend counsel to you, however I would suggest that you seek same." It is undisputed that respondent did not notify the Wejnerts of his suspension prior to October 6, 1997.

By letter dated December 2, 1997, the bankruptcy trustee notified the Wejnerts that their confirmation hearing had been adjourned to January 7, 1998 and that they should seek new counsel because respondent had been suspended. Because the Wejnerts failed to attend the hearing, their case was dismissed on January 22, 1998.

Stephen Wejnert testified that he and his wife consulted respondent in December 1996 because, after they purchased a new house, he lost his job and was unable to pay the mortgage. The Wejnerts were very concerned about keeping their home. It was Stephen

Wejnert's understanding, based on respondent's October 6, 1997 letter, that respondent had already been reinstated by the time they were notified of the suspension. Therefore, according to Stephen Wejnert, even after he received the October 6 letter, he believed that respondent was continuing to represent them in their bankruptcy proceeding. That belief was reinforced by a telephone conversation between his wife and respondent's secretary.

Donna Wejnert testified that, when she received respondent's October 6, 1997 letter, she immediately called respondent's office and was told by his secretary that respondent had been reinstated. According to Donna Wejnert, they did not attend the confirmation hearing, despite the December 2, 1997 letter from the trustee, because respondent told them, at the beginning of their case, that he would take care of the matter and that they would not have to attend any proceedings. Furthermore, according to Donna Wejnert, she had been reassured by respondent's secretary, in October 1997, that respondent had been reinstated. Donna Wejnert stated that she had "no idea about bankruptcy whatsoever."

According to Donna Wejnert, sometime prior to February 1998, she and her husband consulted with another attorney about representing them in their bankruptcy proceeding, but his fee was too high, so they did not retain him. In February 1998, the Wejnerts retained a third attorney, who filed a motion to vacate the dismissal of the Wejnerts' bankruptcy petition. Although it is not entirely clear from the record, it appears that the dismissal was vacated.

Respondent testified that the Wejnert's confirmation hearing had been scheduled for August 1997, but was adjourned to November 1997 because of his suspension. According to respondent, his October 6, 1997 letters, notifying clients that he had been suspended, were the result of an agreement between him and the Office of the United States Attorney:

> What happened was, I had gone over this with Ann Sages, U.S. Attorney Bureau. She had gone through all my bankruptcy files and gave me a list of clients that she felt should still be notified, and that was the October 6 letter. In other words, I had entered into an agreement with the U.S. Attorney to send out these additional letters from lists of the clients that she gave me from going through my, the master list of my bankruptcy clients and the bankruptcy court, and the Wejnerts were on there so I notified them in that letter of October 6 that I was suspended and to seek other counsel.

The complaint charged that respondent's conduct with respect to the Wejnert matter violated RPC 1.1(a), RPC 5.5(a), RPC 8.4(c), RPC 8.4(d) and R.1:20-20(b)(11).

The Torres Matter

The ethics complaint alleged that Maximo Torres retained respondent to file a bankruptcy petition on his behalf in order to save three properties from foreclosure, including his residence. The complaint charged that respondent never filed the petition, causing Torres to lose all three properties to foreclosure.

At the ethics hearing, respondent produced documents showing that he had filed a petition on behalf of Torres in January 1997 and that the case had been dismissed on June 4, 1997 for Torres' failure to make the required payments to the trustee.

Based on those documents and on Torres' testimony, the special master dismissed the charges related to the Torres matter, with the concurrence of the OAE.

Pattern of Neglect

The complaint also charged that respondent's neglect of these various matters constituted a pattern of neglect.

Respondent's Use of a Law Office Sign Following His Suspension

On September 2, 1997, respondent submitted an affidavit to the OAE, pursuant to R. 1:20-20, in which he represented that, since his June 1, 1997 suspension,

> I have not used any sign or advertisement that I alone, or with any other person, have owned conducted or maintained a law office or office of any kind in New Jersey or that I am entitled to practice law in the State of New Jersey.

In fact, respondent had not removed an 18" x 24" sign in front of his law office building that stated "Steven M. Olitsky, Attorney at Law." Respondent testified that he believed that he did not have to remove the sign because he had only been suspended for three months. However, he admitted that the sign remained in front of the building for a year after his suspension.

The complaint charged that respondent's conduct violated RPC 5.5(a), RPC 8.4(c) and R.1:20-20(b)(4).

The Criminal Convictions

On March 25, 1995, respondent was indicted for stalking, in violation of N.J.S.A. 2C:12-10(b), as well as for violating a restraining order. Thereafter, respondent was admitted into the Pretrial Intervention Program ("PTI"). However, he was later terminated from PTI, apparently because he did not complete the required community service and did not pay the fines or the required restitution to his victim.

On February 8, 1999, respondent was indicted for the unauthorized practice of law, in violation of N.J.S.A. 2C:21-22, and theft by deception, in violation of N.J.S.A. 2C:20-4.

On March 16, 1999, respondent pleaded guilty to certain counts of both the 1995 and 1999 indictments. With respect to the 1995 indictment, respondent pleaded guilty to stalking, a crime of the fourth degree. At the time of his plea, respondent admitted having stalked a female attorney, whom he had previously dated, with the intention of annoying her.

With respect to the 1999 indictment, respondent pleaded guilty to three counts of the unauthorized practice of law, also a crime of the fourth degree. At the time of his plea, respondent admitted that he represented Radin and Baptiste, as well as another client, Luwenda David, after he had been suspended, that he "solicited" all three clients and that he did not inform them that he had been suspended. Respondent admitted having received $860 from Radin, $1165 from Baptiste and $1115 from David.

Respondent received five years' probation. He was also ordered to undergo psychiatric counseling, perform 125 hours of community service and pay $8,600 in

restitution to the stalking victim. At the April 2001 ethics hearing, respondent testified that he was no longer on probation, had completed the counseling and community service and had paid $4,600 of the $8,600 restitution. There was a judgment against him for the remaining $4,000.

The complaint charged that respondent's conviction for stalking established a violation of RPC 8.4(b). It did not, however, charge that his conviction for the unauthorized practice of law also violated that RPC. Instead, as set forth below, the complaint only charged that respondent made material misrepresentations to the court during his plea to the unauthorized practice charge.

The Statements to the Court

When respondent pleaded guilty to the unauthorized practice of law, he was asked "you performed the work that was solicited, correct?" and answered "correct." He was asked "[b]ut you performed the services, did what you were supposed to do?" and replied "yes."

Respondent did not disclose to the court that he had put Ianetti's signature on the petitions filed for Radin and Baptiste or that he had not actually represented them in the proceedings.

The complaint charged that respondent's conduct violated RPC 3.3(a)(1) and RPC 3.3(a)(4).

* * *

In mitigation, respondent contended that depression interfered with his judgment. Respondent testified that, in 1991, his mother died and he was involved in a lengthy divorce and custody case with his former wife. He eventually obtained custody of his daughter, who was nine years old. According to respondent, his divorce and custody case caused him to spend less time working for his law partnership, which resulted in its dissolution in 1992. Thereafter, according to respondent, he became depressed. Respondent also stated that the dissolution cost him approximately $40,000 and that he began using his credit cards to pay bills. He stated that he filed a bankruptcy petition in 1994, that the petition was dismissed, and that he filed another petition in 1995.

According to respondent, he was treated by a psychiatrist for three or four years and was placed on medication. Respondent attached to his petition for reinstatement an August 18, 1997 letter from Harish K. Malhotra, M.D., a psychiatrist, who stated that he had been treating respondent for depression since 1995. In Dr. Malhotra's opinion, there was "no psychiatric contra-indication which would limit his ability to practice law, and hence he is fit and competent to practice law."

* * *

The special master found respondent guilty of all of the charges, except for those related to the Torres matter. He recommended that, for each of the counts, respondent be suspended for varying amounts of time, ranging from three months to two years, all suspensions to be retroactive to June 1, 1997. In rejecting the OAE's argument that respondent should be disbarred, the special master quoted In re Templeton, 99 N.J. 365, 376 (1985):

> Disbarment is reserved for the case in which the misconduct of an attorney is so immoral, venal, corrupt or criminal as to destroy any vestige of confidence that the individual could ever again practice in conformity with the standards of the profession.

Although the special master recommended the dismissal of all charges in the Torres matter, he stated that respondent should be ordered to pay the cost of the interpreter required for Torres' testimony, because respondent failed to produce the relevant documents during discovery.

The special master also recommended that respondent be required to submit, prior to reinstatement, a report by a mental health professional approved by the Office of Attorney Ethics, attesting to his fitness to practice law.

* * *

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

Respondent violated RPC 5.5(a), RPC 8.4(c), RPC 8.4(d) and R.1:20-20(b)(11), when he (1) agreed to represent clients in bankruptcy cases after he was suspended; (2) did not advise them that he was suspended from practice; (3) charged clients for the prohibited representation; and (4) signed Ianetti's name on the petitions without his consent and then filed the petitions with the bankruptcy court. Even if Ianetti had consented to respondent's use of his name on the petitions – which Ianetti disputed – respondent still violated those RPCs. Respondent continued to practice law by meeting with clients, taking fees and preparing the bankruptcy petitions, in violation of RPC 5.5(a). He violated RPC 8.4(d) by continuing to practice law, in violation of the orders of the New Jersey Supreme Court and the district court. He also violated RPC 8.4(d), as well as R. 1:20-20(b)(11), by failing to notify his clients of his suspension. Finally, respondent violated RPC 8.4(c) by telling clients that he would represent them in their bankruptcy cases, when he knew that he was prohibited from doing so.

With respect to the Johnson matter, respondent attempted to justify his misconduct by denying that he and Evelyn Johnson had reached a fee agreement on his fee for representing Cassandra Johnson at her arraignment. Yet, he continued to accept payments from Evelyn toward that fee. Furthermore, both Evelyn and the trial court believed that respondent continued as Cassandra's attorney after the bail hearing. In fact, the trial court ordered him to appear in the case sometime in October 1997. It was only at that time that respondent advised the court and his client that he had been suspended. Therefore, there is

clear and convincing evidence that respondent violated RPC 5.5(a), RPC 8.4(d) and R.1:20-20(b)(11) in the Johnson matter.

The complaint also alleged that respondent grossly neglected the Johnson case. However, the complaint did not contain any facts concerning that charge and there was no evidence at the hearing involving the charge, other than that respondent did not appear for the arraignment. Respondent should not have been working on the case after June 1, 1997. It would be incongruous to sanction him for not doing something that he was prohibited from doing. Therefore, we dismissed the charge that respondent's conduct violated RPC 1.1(a). For the same reasons, we also dismissed the charges that respondent's conduct in the Oakes and Wejnert matters violated RPC 1.1(a) and that his conduct in the three matters constituted a pattern of neglect.

In the Oakes matter, respondent denied having met with the Oakeses on October 4, 1997 and claimed that their $200 check to him was in payment for work performed in 1996. That testimony is entitled to no weight. It is clear from the other cases that, after his suspension, respondent met with clients in his office, agreed to represent them and took fees from them. Furthermore, the special master obviously found Ann Marie Oakes' testimony to be credible and respondent's incredible. Therefore, we find clear and convincing evidence that respondent met with the Oakeses after he was suspended, misrepresented to them that he would assist them in keeping their house out of foreclosure, took a $200 fee

from them, and then did nothing. Therefore, we find that respondent's misconduct in the Oakes matter violated RPC 5.5(a), RPC 8.4(c), RPC 8.4(d) and R.1:20-20(b)(11).

With respect to the Wejnert matter, it is clear that respondent did not notify the Wejnerts of his suspension until October 6, 1997, after having been required to do so by an attorney whom respondent identified as being with the Office of the U.S. Attorney. Therefore, it is clear that respondent violated RPC 8.4(d) and R.1:20-20(b)(11). However, there is no clear and convincing evidence that respondent violated RPC 5.5(a) or RPC 8.4(c). There is no evidence that respondent engaged in the practice of law with respect to the Wejnerts' bankruptcy. Similarly, there is no evidence that respondent made any misrepresentations to the Wejnerts. The Wejnerts testified that respondent's secretary, not respondent, told Mrs. Wejnert that respondent had been reinstated. There is no evidence that respondent had knowledge of, authorized or ratified his secretary's statement. Therefore, in the Wejnert matter, we find that respondent violated RPC 8.4(d) and R.1:20-20(b)(11), but dismiss the remaining charges.

Respondent admitted that he did not remove his law office sign after his suspension, allegedly because he did not believe such removal was necessary in three-month suspension situations. However, R.1:20-20(b)(4) applies to all attorneys who have been suspended, regardless of the length of the suspension. Although R.1:20-20(c) provides exemptions from some of the requirement for attorneys who have been suspended for six months or less, there is no exemption from the requirements of R.1:20-20(b)(4). Furthermore, respondent

admitted that he did not remove the sign even after the Court denied his petition for reinstatement.

With respect to his conviction for stalking, respondent argued that such an offense does not reflect adversely on his honesty, truthfulness or fitness as a lawyer. We disagree. See In re Frankfurt, 159 N.J. 521 (1999) (attorney suspended for three months on a motion for final discipline based on his contempt conviction and guilty plea to a fourth degree stalking charge.) We find that respondent's conviction for stalking constituted a violation of RPC 8.4(b). In addition, we find that respondent's conviction for the unauthorized practice of law also violated that RPC. Although respondent was not specifically charged with a violation of RPC 8.4(b) for that conviction, the record developed below contains clear and convincing evidence of the violation. Furthermore, respondent did not object to the admission of such evidence in the record. In light of the foregoing, we deemed the complaint amended to conform to the proofs. R. 4:9-2; In re Logan, 70 N.J. 222, 232 (1976).

Finally, the complaint charged that respondent violated RPC 3.3(a)(1) and RPC 3.3(a)(4) in his answers to questions intended to establish the factual basis for his guilty plea to the unauthorized practice of law. Specifically, respondent answered in the affirmative when asked if he had performed the services for which he had been retained and did not advise the court that he had signed Ianetti's name on the bankruptcy petitions and had not actually represented the clients in the proceedings. Respondent argued that he did not lie

to the court, reasoning that he had agreed to file bankruptcy petitions for the clients and that the petitions had been filed. Moreover, respondent contended, he was not asked whether Ianetti's signature was wrongfully affixed to the petitions.

RPC 3.3(a)(1) states that a "lawyer shall not knowingly make a false statement of material fact or law to a tribunal." RPC 3.3(a)(4), in turn, states that a "lawyer shall not knowingly offer evidence that the lawyer knows to be false." Both rules are applicable here. Respondent knew, when he testified at his plea hearing, that he had not done all of the work for which he had been retained and that he had wrongfully placed Ianetti's name on the petitions. His argument that he had filed the petitions is disingenuous, since he was retained to represent the clients in their bankruptcy cases, not merely file the petitions. Therefore, we find clear and convincing evidence that respondent violated RPC 3.3(a)(1) and RPC 3.3(a)(4).

Finally, we find that the special master correctly dismissed the charges related to the Torres matter.

In sum, respondent violated RPC 3.3(a)(1), RPC 3.3(a)(4), RPC 5.5(a), RPC 8.4(b), RPC 8.4(c), RPC 8.4(d), R.1:20-20(b)(4) and R.1:20-20(b)(11). His conduct with respect to practicing while suspended was rendered more egregious by the fact that his motivation for the unethical conduct was pecuniary. Because respondent needed money, he continued to practice law, lied to clients, took fees from them and practiced in contravention of the orders of the New Jersey Supreme Court and the district court. He also stated that he was

afraid that, if he told his clients of his suspension, he would lose their future business, as well as a "pipeline" of bankruptcy case referrals from a person respondent described as a "vulture," who, "when people have foreclosures, [] swoops down and says, 'I can give you your property. I've got an attorney or two to send you to.'"

The level of discipline for practicing law while suspended has generally ranged from a two-year suspension to disbarment, depending on a number of factors, including the attorney's level of cooperation with the disciplinary proceedings, the presence of other misconduct and the attorney's disciplinary history. See In re Goldstein, 97 N.J. 545 (1984) (attorney disbarred for misconduct in eleven matters and for practicing law while temporarily suspended by the Court and in violation of an agreement with the Disciplinary Review Board that he limit his practice to criminal matters); In re Kasdan, 132 N.J. 99 (1993) (three-year suspension where the attorney continued to practice law after the Court denied her request for a stay of her suspension; failed to inform her clients, adversary or the courts of her suspension; failed to keep complete trust records and failed to advise her adversary of the location and amount of escrow funds; attorney was also guilty of conduct involving dishonesty, fraud, deceit or misrepresentation); In re Beltre, 130 N.J. 437 (1992) (attorney suspended for three years for appearing in court after having been suspended and misrepresenting his status to the judge, failing to carry out his responsibilities as an escrow agent, lying to the Disciplinary Review Board about maintaining a bona fide office and failing to cooperate with an ethics investigation) and In re Wheeler, 140 N.J. 321 (1995)

(attorney suspended for two years for practicing law while suspended, making multiple misrepresentations to clients, displaying gross neglect and a pattern of neglect and engaging in conduct that involved negligent misappropriation, conflict of interest and failure to cooperate with disciplinary authorities).

We find that respondent's conduct in these matters was abominable. He violated court orders, lied to clients and the court and stalked another attorney. Furthermore, he has an extensive disciplinary history: a private reprimand, an admonition, two three-month suspensions and two six-month suspensions. In "the totality of the circumstances respondent has demonstrated that his ethical deficiencies are intractable and irremediable." In re Templeton, supra, 99 N.J. at 376.

In light of the foregoing, we unanimously determined to recommend that respondent be disbarred from the practice of law. Two members did not participate.

We further determined to require respondent to reimburse the Disciplinary Oversight Committee for administrative costs.

By: _____
ROCKY L. PETERSON
Chair
Disciplinary Review Board

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Steven M. Olitsky
Docket No. DRB 01-267

Argued: October 18, 2001

Decided: February 6, 2001

Disposition: Disbar

Members	*Disbar*	*Suspension*	*Reprimand*	*Admonition*	*Dismiss*	*Disqualified*	*Did not participate*
Peterson	X						
Maudsley	X						
Boylan	X						
Brody	X						
Lolla	X						
O'Shaughnessy	X						
Pashman							X
Schwartz							X
Wissinger	X						
Total:	7						2

Robyn M. Hill 2/28/02
Robyn M. Hill
Chief Counsel