

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 04-245

IN THE MATTER OF
PHILIP M. MORELL
AN ATTORNEY AT LAW

Decision
Default [R. 1:20 4(f)]

Decided: October 26, 2004

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

Pursuant to R. 1:20-4(f), the District IIA Ethics Committee
("DEC") certified the record in this matter directly to us for the
imposition of discipline, following respondent's failure to file an
answer to the formal ethics complaint.

The complaint alleged that respondent neglected a matter and
lied to the client about the representation.

Respondent was admitted to the New Jersey bar in 1988 and the
New York bar in 1989.

On June 3, 2004, on a motion for reciprocal discipline filed

by the Office of Attorney Ethics, the Supreme Court suspended respondent for one year, effective August 8, 2003, for repeated misrepresentations to two clients. Specifically, respondent told elaborate lies to the clients, fabricated documents, including a settlement statement for the clients' signature and a court notice, and also altered a court order. In re Morell, 180 N.J. 153 (2004).

On June 11, 1997, the grievant, Marc Fink, retained respondent to file a medical malpractice action against a surgeon and a hospital for damages from surgeries to repair four herniated discs in his lower back.

Fink's spinal injuries stemmed from a 1994 automobile accident, when he was a young professional baseball player in Arizona. An initial surgery was performed in Arizona, after which Fink developed a staphylococcus infection. A Dr. Weinstein performed additional surgeries, which were alleged to have been substandard. Indeed, the combination of events was alleged to have caused deterioration to Fink's lower body, severe enough to end his baseball career and leave his right calf atrophied three inches, as compared to his left calf.

Respondent failed to file suit against the parties and, for four years thereafter, misrepresented the status of the case to Fink. Specifically, respondent contrived a story that suit had been

filed and that experts, including a neurosurgeon and physiatrist, had been obtained.

Thereafter, respondent told Fink that he had met with representatives from the insurance carrier of one of the defendants to discuss settlement, and that he believed the case had a value of \$10,000,000.

Later, respondent told Fink that the carrier had offered a \$250,000 settlement, which he had rejected as insufficient. Respondent subsequently advised his client that the carrier had increased its offer to \$700,000, but that he believed he could obtain a higher settlement.

In March 2001, respondent obtained Fink's approval for a \$1.1 million settlement. In fact, there was no such settlement. Respondent then had Fink sign a bogus release that he had prepared in that amount. Respondent told Fink that he could now "purchase the car of his dreams." Therefore, Fink borrowed funds from his father and purchased a Lexus GS400 luxury automobile.

Respondent continued to misrepresent the status of the case thereafter. In communications with an attorney representing Fink in a workers' compensation matter, respondent stated that he had obtained a \$1.1 million settlement.

In July 2001, respondent told Fink that he had received the

\$1.1 million settlement funds, that those funds had "cleared the bank," and that he would wire the funds to Fink immediately. Several days later, respondent also told Fink that, due to a Federal Reserve Bank problem, the funds would be wired directly to Fink's bank on July 4, 2001, even though it was a bank holiday. Several days later, when the money did not appear, respondent admitted to Fink's father that he had not filed suit, and that his story was a fabrication.

On July 22, 2003, the DEC sent a copy of the complaint to respondent's last known address, 19 Phelps Venue, Tenafly, New Jersey 07670, by certified and regular mail. On July 23, 2003, the certified mail receipt was returned by the postal authorities signed by "S. Douglas." The regular mail was not returned.

Respondent attempted to file an unverified answer. Therefore, on August 28, 2003, the DEC sent respondent a letter advising him that, pursuant to R.1:20-4(e), the answer must be verified. That letter was sent to respondent at the address respondent used at the head of his unverified answer, 22 Lorenz Avenue, New Rochelle, New York 10801. The record does not specify the method of delivery.

On September 6, 2004, we caused a notice to be published in the New Jersey Law Journal and the New Jersey Lawyer, advising respondent of our scheduled review of this matter on September 23,

2004, and of the deadline for the filing of a motion to vacate the default. We did not hear from respondent.

Respondent did not re-file his answer to the complaint.

Service of process was properly made. Following a review of the record, we find that the facts recited in the complaint support the charges of unethical conduct. Because of respondent's failure to file an answer, the allegations of the complaint are deemed admitted. R.1:20-4(f).

Fink retained respondent to prosecute a significant malpractice claim against a surgeon and a hospital for an infection, which set in after surgery and allegedly ravaged Fink's lower back. Allegedly, the subsequent surgery performed by Dr. Weinstein was unsound and the cause of further deterioration of the region. Thereafter, respondent took no action to prosecute his client's claim, in violation of RPC 1.1(a) and RPC 1.3. Also, respondent failed to reply to Fink's requests for information about the status of his case, in violation of RPC 1.4(a).

The most troublesome aspect of respondent's misconduct, however, related to the outrageous web of deceit and misrepresentation perpetrated upon his client and others – that he had properly handled the case and had obtained a highly favorable result. By misrepresenting the status of the matter to Fink's

workers' compensation attorney, respondent violated RPC 4.1. We also find that respondent's multiple lies to Fink were in violation of RPC 8.4(c). Although respondent was not specifically charged with violations of RPC 8.4(c), the complaint contained sufficient facts to establish violations of that rule.

It is well-settled that "intentionally misrepresenting the status of lawsuits warrants public reprimand." In re Kasdan, 115 N.J. 472, 488 (1989). In default matters, we upgrade the discipline imposed to reflect an attorney's failure to cooperate with disciplinary authorities as an aggravating factor. Therefore, a suspension is warranted in this matter. In aggravation, respondent has already been found guilty of similar misconduct, for which he received a one-year suspension. There, respondent told elaborate lies to two clients, fabricated documents, including a settlement statement for his clients' signature and a court notice, and also altered a court order. A long term of suspension is, therefore, required. See, e.g., In re Restaino, 127 N.J. 403 (1992) (six-month suspension imposed for gross neglect in a single matter, compounded by misrepresentation of the status of the matter to the client for a two-year period; prior private reprimand).

More severe discipline has been meted out where the attorney concocts false documents to support a non-existent case. See e.g.,

In re Weingart, 127 N.J. 1 (1992) (two-year suspension imposed for grossly neglecting one case, lying to the client about the status of the case and preparing and submitting to his client, the Office of the Attorney General, and the Administrative Office of the Courts a fictitious complaint with intent to mislead the client into believing that a lawsuit had been instituted when, in fact, it had not; all but six months of the suspension were suspended for compelling mitigating factors); and In re Kornreich, 149 N.J. 346 (1997) (three-year suspension for attorney who falsely accused her babysitter of being involved in an automobile accident that in fact involved the attorney/respondent, in order to secure the dismissal of criminal charges).

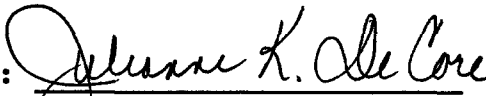
This case requires severe discipline. Like the attorney in Weingart, this respondent lied to his client, in outrageous contravention of the facts, about every aspect of a litigation that existed only in respondent's head. In fact, this respondent created an entire case and settlement scenario out of whole cloth to cover his shameful sloth. He even fabricated a \$1.1 million settlement authorization for Fink's signature and told him to purchase a luxury automobile in anticipation of settlement. The damage inflicted upon Fink by respondent must have been substantial, given the apparent validity of Fink's claims. Finally, respondent allowed

the matter to proceed to us as a default.

In light of all of these considerations, we determine that a two-year suspension is warranted, to be served at the expiration of respondent's current one-year suspension. In addition, respondent is to submit, prior to reinstatement, proof of fitness to practice law, as attested by a mental health professional approved by the Office of Attorney Ethics. Members Barbara F. Schwartz and Spencer V. Wissinger, III did not participate.

We also determine to require respondent to reimburse the Disciplinary Oversight Committee for administrative expenses.

Disciplinary Review Board
Mary J. Maudsley, Chair

By: 
Julianne K. DeCore
Chief Counsel


SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Philip M. Morell
Docket No. DRB 04-245

Decided: October 26, 2004

Disposition: Two-year suspension

| Members | Two-year Suspension | Reprimand | Admonition | Disqualified | Did not participate |
|---------------|------------------------|-----------|------------|--------------|------------------------|
| Maudsley | X | | | | |
| O'Shaughnessy | X | | | | |
| Boylan | X | | | | |
| Holmes | X | | | | |
| Lolla | X | | | | |
| Pashman | X | | | | |
| Schwartz | | | | | X |
| Stanton | X | | | | |
| Wissinger | | | | | X |
| Total: | 7 | | | | 2 |


Julianne K. DeCore
Chief Counsel