

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 16-046
District Docket No. XIV-2014-0343E

IN THE MATTER OF
BENJAMIN H. PERKEL
AN ATTORNEY AT LAW

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Decision

Argued: June 16, 2016

Decided: September 22, 2016

Jason D. Saunders appeared on behalf of the Office of Attorney Ethics.

Respondent appeared pro se.

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

This matter is before us on a motion for reciprocal discipline filed by the Office of Attorney Ethics (OAE), pursuant to R. 1:20-14, following respondent's suspension in Pennsylvania for two years, retroactive to June 12, 2014, for his violation of the Pennsylvania equivalents of New Jersey RPC 1.5(a) (unreasonable fee); RPC 4.1(a)(1) (making a false statement of material fact or law to a third person); RPC 8.4(a)

(violating the RPCs); and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation). The OAE seeks a suspension in the range of three months to two years. Respondent requests discipline of no greater than a three-month suspension. For the reasons expressed below, we determined to grant the OAE's motion and impose a three-month suspension, retroactive to May 27, 2015, the date of entry of the Pennsylvania order imposing a two-year suspension on respondent, retroactive to June 12, 2014.

Respondent was admitted to the New Jersey and Pennsylvania bars in 2010. He has no history of discipline in New Jersey.

On June 2, 2014, respondent notified the OAE that he had been temporarily suspended in Pennsylvania, pending the outcome of a disciplinary investigation.

On March 30, 2015, respondent executed a Joint Petition in Support of Discipline on Consent under Rule 215(d), Pa.R.D.E. Respondent stipulated that, from November 2011 to November 2012, Drinker Biddle & Reath L.L.P ("the firm") employed him as an independent staff attorney. The firm paid him \$40 per hour for his services and billed clients for his time at a rate of \$245 per hour. From November 28, 2011 through November 14, 2012, the actual time respondent spent in reviewing documents and performing related tasks for the "Passaic River Litigation"

totaled 1,303 hours. During that same period, however, respondent recorded that he spent 1,721.5 hours on that matter. Respondent, thus, inflated his billable time by 418.5 hours. The client overpaid a total of \$49,752, representing 203 hours of the 418.5 hours overbilled.

Respondent admitted that he violated Pennsylvania RPCs 1.5(a) (excessive fee); 4.1(a) (false statement of material fact or law to a third person); 8.4(a) (violating or attempting to violate the Rules of Professional Conduct); and 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation).

On April 16, 2015, the Disciplinary Board of the Supreme Court of Pennsylvania approved the Joint Petition in Support of Discipline on Consent and recommended to the Supreme Court of Pennsylvania that the petition be granted. On May 17, 2015, the Supreme Court of Pennsylvania entered an Order granting the Joint Petition and suspending respondent for a period of two years, retroactive to June 12, 2014.

In support of its recommended range of discipline, the OAE relies on several cases involving similar conduct by attorneys. Specifically, in In re Day, 217 N.J. 280 (2014), the attorney was suspended for three months for violating RPC 8.4(c) in connection with his submission of false time entries indicating that he had attended depositions on fifty-one dates when he had

attended only twenty depositions. Clients were billed based on the false time entries. Day's firm ultimately reimbursed those clients a total of \$123,050.49. The OAE had proposed the imposition of a suspension of six months or one year. The Court adopted our recommendation and imposed a three-month suspension. In the Matter of Neil M. Day, DRB 13-244 (December 20, 2014). (slip op. at 13, 14). We distinguished the attorney's conduct from more serious cases because he had attempted, albeit ineffectively, to correct the false time entries and had not intended to make misrepresentations to the client.

In In re Hecker, 109 N.J. 539 (1988), an attorney received a six-month suspension when, in his role as a part-time municipal attorney, he had prepared and submitted bills for services purportedly rendered to the township, certifying them to be accurate, when he knew otherwise. In the Matter of Laurence A. Hecker, DRB 85-419 (April 15, 1987). The bills totaled \$320,000 and the township paid Hecker approximately \$280,000. The Court imposed a six-month suspension on Hecker, taking into consideration his prior unblemished disciplinary history and the passage of fifteen years since the misconduct had occurred. In re Hecker, supra 109 N.J. 539.

Here, the OAE contends that the Court has imposed disbarments where the false billing misconduct is coupled with

more egregious violations and additional factors in aggravation. See, e.g., In re Denti, 204 N.J. 566 (2011) (disbarment for attorney who, while a partner at two law firms, submitted false entries in the firms' time-keeping systems, in an effort to mislead them into believing that he was performing legal work; his intent was to ensure the continuation of his agreed compensation); and In re Ort, 134 N.J. 146 (1993) (disbarment for attorney who, while representing a widow in settling her husband's estate, mortgaged the estate residence without his client's permission and then used that loan to take excessive and unauthorized legal fees).

The OAE concedes that here, respondent's conduct is distinguishable from that of the attorneys in Denti and Ort and is more analogous to the facts presented in Day and Hecker. In addition, and in mitigation, the OAE notes that, at the time of the misconduct, respondent had no disciplinary history, was a young and inexperienced attorney, quickly accepted responsibility for his misconduct, and expressed contrition. In aggravation, however, the OAE argues that he engaged in a continuing course of dishonesty, motivated primarily by pecuniary gain, that resulted in economic injury to the firm and a client.

In his reply brief, respondent acknowledged his wrongdoing and offered his contrition, along with other mitigating factors in support of his request for no more than a three-month suspension.

Specifically, respondent explains that he was a low-level contract attorney who had recently been admitted to the bar when the misconduct occurred, and urges us to consider his youth and inexperience. Respondent further notes that he self-reported his misconduct to disciplinary authorities in Pennsylvania and consented to a temporary suspension during the ensuing investigation into his misconduct, thus demonstrating his remorse and accountability. He states his intention to repay the firm for the unearned wages he received.

Further, respondent submitted reports from his treating physician, Allen J. Rubin, MD, outlining several medical conditions that played a role in the misconduct, including attention deficit disorder (ADD), impulse control disorder, a transient episode of alteration of awareness (non-recurrent), and adjustment disorder with depressed mood. Dr. Rubin stated that respondent's ADD contributed to his inability to keep accurate time records because it affected his organizational skills. Additionally, in June 2010, respondent was held up at gunpoint in Camden, which exacerbated "cognitive and attentional

difficulties" and brought on a host of other serious symptoms stemming from post-traumatic stress disorder. Hence, Dr. Rubin noted, respondent's wide-ranging medical issues have created a vicious cycle of depression. However, he opined, when compliant with his medications and regular psychotherapeutic contacts, respondent is able to function effectively and reliably.

Finally, respondent relies on the same cases the OAE presented in its motion, distinguishing the majority thereof and arguing that his conduct is comparable to that of Day, supra. Hence, he urges that, like Day, he should receive no more than a three-month suspension.

On review of the full record, we determined to grant the OAE's motion for reciprocal discipline. Pursuant to R. 1:20-14(a)(5), another jurisdiction's finding of misconduct shall establish conclusively the facts on which it rests for purposes of disciplinary proceedings. Therefore, we adopt the findings of the Pennsylvania Disciplinary Review Board and find respondent guilty of violating New Jersey RPCs.

Reciprocal discipline proceedings in New Jersey are governed by R. 1:20-14(a)(4), which provides:

The Board shall recommend the imposition of the identical action or discipline unless the respondent demonstrates, or the Board finds on the face of the record on which the discipline in another jurisdiction was predicated that it clearly appears that:

(A) the disciplinary or disability order of the foreign jurisdiction was not entered;

(B) the disciplinary or disability order of the foreign jurisdiction does not apply to the respondent;

(C) the disciplinary or disability order of the foreign jurisdiction does not remain in full force and effect as the result of appellate proceedings;

(D) the procedure followed in the foreign disciplinary matter was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process;

(E) the unethical conduct established warrants substantially different discipline.

A review of the record does not reveal any conditions that would fall within the ambit of subparagraphs (A) through (D). Subsection (E), however, applies in this case because respondent's unethical conduct in Pennsylvania does not warrant a two-year suspension in New Jersey.

Respondent's conduct violated New Jersey RPC 1.5(a), RPC 4.1(a)(1), RPC 8.4(a), and RPC 8.4(c). He made material false statements and misrepresentations about the hours he worked on a client matter for the firm. He inflated his billable time and allowed these hours to be submitted to the client for reimbursement and, in turn, was paid for these hours as a contract attorney for the firm. Ultimately, respondent's

inflated billable hours resulted in a fee amount charged to the client that was unreasonable relative to the actual amount of legal work performed.

Much like the attorneys in Hecker and Day, respondent inflated billable hours paid by clients. The overbilled amounts were significantly higher in Hecker (\$320,000) and Day (\$123,050.49) than here (\$49,752). Nonetheless, the firm's client was economically harmed. Respondent's conduct occurred over four years ago. While not as significant a passage of time as in Hecker (fifteen years), we, nevertheless, consider it in mitigation, particularly in the context of the number of years respondent has been a licensed attorney. Respondent had been a member of the bar for just over one year at the time of his misconduct. While youth and inexperience are not a justification for making misrepresentations, they weigh in favor of respondent's ability to move forward from these circumstances and become a productive member of the profession. Indeed, respondent shows some promise in this regard, in light of his willingness to take responsibility for his actions, as evidenced by his self-reporting of his conduct, the contrition he has since expressed, and his stated intention to repay the firm for the unearned wages he collected.


Finally, we accept Dr. Rubin's observations and conclusions in respect of the several medical conditions that contributed to respondent's conduct and his prognosis for effective functioning with continued medication and treatment. Hence, under the totality of the circumstances, we determined to impose a three-month suspension. Because respondent promptly reported his Pennsylvania discipline, we further determine to apply the suspension retroactively to May 27, 2015, the date of entry of the Pennsylvania order imposing a two-year retroactive suspension on respondent.

Member Gallipoli voted to impose the three-month suspension prospectively.

Members Hoberman and Rivera did not participate.

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
Bonnie C. Frost, Chair

By: 
Ellen A. Brodsky
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

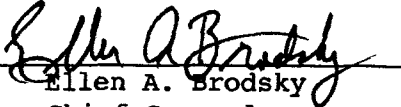
In the Matter of Benjamin H. Perkel
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Disposition: Three-month retroactive suspension

Members	Disbar	Three-month Prospective Suspension	Three-month Retroactive Suspension	Dismiss	Disqualified	Did not participate
Frost			X			
Baugh			X			
Boyer			X			
Clark			X			
Gallipoli		X				
Hoberman						X
Rivera						X
Singer			X			
Zmirich			X			
Total:		1	6			2


Ellen A. Brodsky
Chief Counsel