SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 11-413
District Docket No. XIV-2010-0534E

IN THE MATTER OF	:
KENNETH PAUL SIRKIN	:
AN ATTORNEY AT LAW	:

Decision

Argued: February 16, 2012

Decided: May 9, 2012

Michael J. Sweeney appeared on behalf of the Office of Attorney Ethics.

Respondent did not appear despite proper notice.[1]

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

This matter was 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 ten-year

[1] Respondent was served by regular and certified mail addressed to 8619 Daystar Ridge Point, Boynton Beach, Florida, 33473-7843. The certified mail was returned as unclaimed. The regular mail was not returned.

disbarment in Florida for, among other things, "conversion" of trust funds.[2]

The OAE recommends respondent's disbarment. For the reasons detailed below, we agree with that recommendation.

Respondent was admitted to the New Jersey bar in 1999. He was also admitted to the New York and Florida bars in 2000 and 2002, respectively. He resides in Boynton Beach, Florida.

On October 6, 2009, respondent received a three-month suspension in New Jersey for lack of diligence, gross neglect, failure to communicate with the client, and failure to cooperate with disciplinary authorities. Specifically, several years after respondent settled a motor vehicle case for the full amount of the policy ($47,000) and after the defendant deposited the funds with the court, respondent did not sign the release and other documents incidental to the settlement and did not obtain the funds for his client, despite their obvious availability. The client's attempts to communicate with him were unavailing. He

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[2] In Florida, disbarment may be permanent or non-permanent. Rules Regulating The Florida Bar: RULE 3-5.1(f). Under that rule, "[p]ermanent disbarment shall preclude readmission," but "[a] former member who has not been permanently disbarred may . . . be admitted again upon full compliance with the rules and regulations governing admission to the bar." No application for re-admission may be made within five years of the disbarment date "or such longer period as the court might determine in the disbarment order."

also did not cooperate with the investigation of the grievance that the client filed against him. That matter proceeded on a default basis. In re Sirkin, 200 N.J. 271 (2009).

On December 9, 2011, respondent received a censure, also in a default matter, for failure to file the required affidavit of compliance with R. 1:20-20, following his three-month suspension from the practice of law. In re Sirkin, 208 N.J. 432 (2011).

In September 2003, respondent was placed on the New Jersey Supreme Court's list of ineligible attorneys and remained on that list until May 2006. His ineligibility stemmed from his failure to pay the annual attorney assessment to the New Jersey Lawyers' Fund for Client Protection.

In Florida, too, respondent has an ethics history. On August 13, 2009, he received a ten-day suspension for "violations related to communication with clients, declining or terminating representation with a client, and failure to respond to the Bar's inquiries in Supreme Court Case No. SC08-2292." On March 26, 2010, he was "emergency suspended" in connection with SC Case No. 10-139. On June 17, 2010, he was suspended for three years for "contemptuous failure to comply with a subpoena in Supreme Court Case No. SC09-1125."

The conduct that gave rise to this motion for reciprocal discipline was as follows:

In April 2010, the Florida Bar filed a twenty-eight-count complaint against respondent, following the Supreme Court of Florida's order approving the Bar's Petition for Emergent Suspension of respondent. On June 17, 2010, a default judgment was entered against respondent for his failure to file a responsive pleading to the complaint.[3]

The complaint charged respondent with multiple violations of the Rules Regulating the Florida Bar (the Florida Rules). The charges arose from respondent's mishandling of thirteen client matters, an audit of his attorney records conducted by the Florida Bar, and his three-month suspension in New Jersey.[4] Because of the entry of default against respondent, the allegations of the complaint were deemed admitted.

In five counts (III, V, IX, XV, and XXV), respondent was charged with, among other things, conversion of client funds. Thirteen counts charged him with failure to reply to numerous inquiries made by either bar counsel or a disciplinary agency. All told, respondent ignored twenty-two letters from the Florida Bar. The remaining counts charged him with

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[3] At a June 3, 2010 case management conference, respondent acknowledged that service of the complaint had been made at the correct address.

[4] Although the OAE's brief refers to fourteen client matters, Counts III and V of the complaint address respondent's conduct in the same client matter (Jorge Nunez).

> a host of other ethics violations, including multiple instances of lack of diligence, failure to communicate, charging an improper contingent fee, violations of the rules regarding fee agreements in contingent fee cases, failure to comply with the client's instructions, failure to make prompt disposition of trust funds, failure to maintain required records, and conduct prejudicial to the administration of justice.
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> [OAEb at 3.][5]

As may be seen from the complaint, respondent began to run afoul of the disciplinary rules in Florida in 2004, a mere two years after his bar admission in that state. As stated in Count XXIII, his contingency fee contract with client Lucy DeRosa, who retained him in 2004, did not comply with the Florida Rules. The bulk of respondent's unethical acts occurred in 2006-2007.

The Florida referee made the following findings of facts, among others:

Count I – Pursuant to Florida Rule 3-4.6(a), respondent's three-month suspension in New Jersey was conclusive proof of misconduct.

Counts III and V – Respondent received a $250,000 settlement check on behalf of Florida client Jorge Nunez, which he deposited in his trust account on April 13, 2007. As of

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[5] "OAEb" denotes the OAE's brief in support of its motion for reciprocal discipline.

November 30, 2009, an undistributed balance of $13,667 remained in the trust account.[6] Out of those funds, $4,500 belonged to Nunez' former attorney for legal fees. Respondent and the former attorney had entered into an agreement for the satisfaction of that lien. Despite respondent's agreement with the attorney and the attorney's demands for the satisfaction of the lien, respondent has either failed or refused to do so and has also either failed or refused to promptly distribute such funds to Nunez. The complaint charged, and the referee found, that "[m]oney and other property of clients coming into the hands of an attorney are not subject to counterclaim or setoff for attorney's fees, and a refusal to account for and deliver over such property upon demand shall be deemed a conversion," under Florida Rule 5-1.1(b).

Count IX – On December 1, 2006, respondent deposited in his trust account a $50,000 settlement received on behalf of client Paul Patterson. After respondent made certain distributions to Patterson and to himself, he continued to hold $8,333.34 in the Patterson case. Patterson's attempts to communicate with respondent about monies due to him were unavailing. In addition, respondent did not provide Patterson with a "written statement

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[6] According to the Florida Bar's reconstruction of respondent's trust account records, respondent disbursed $153,000 to Nunez and $83,333 to himself.

stating the outcome of the matter and showing the remittance to the client and the method of its determination." The complaint alleged, and the referee found, that "[m]oney and other property of clients coming into the hands of an attorney are not subject to counterclaim or setoff for attorney's fees, and a refusal to account for and deliver over such property upon demand shall be deemed a conversion," under Florida Rule 5-1.1(b).

Count XV - On or about September 12, 2006, respondent received and deposited in his trust account $290,000 on behalf of client Jacob Miller and members of Miller's family. After respondent settled the case, Miller's efforts to ascertain the status of any funds left in respondent's trust account were unsuccessful. The Florida Bar audit revealed that, as of November 30, 2009, respondent had an undistributed balance of $24,805 in his trust account. Respondent also failed to provide Miller with a written settlement statement. The complaint charged, and the referee found, that "[m]oney and other property of clients coming into the hands of an attorney are not subject to counterclaim or setoff for attorney's fees, and a refusal to account for and deliver over such property upon demand shall be deemed a conversion," under Florida Rule 5-1.1(b).

Count XXV – On November 19, 2008, respondent deposited a $300,000 settlement into his trust account on behalf of client

Philomene Cherizard. He distributed $100,000 to himself, $10,000 to Cherizard as "partial disbursement of recovery," and certain sums to third parties. A balance of $52,000 remained in his trust account. Despite Cherizard's demands, respondent has failed and/or refused to account for the balance of the settlement funds and to remit the balance to his client. According to the complaint and the referee, "[m]oney and other property of clients coming into the hands of an attorney are not subject to counterclaim or setoff for attorney's fees, and a refusal to account for and deliver over such property upon demand shall be deemed a conversion," under Florida Rule 5-1.1(b).

In finding that respondent should be disbarred for a period of ten years, the referee noted that several Florida Standards for Imposing Lawyer Sanctions (Florida Standard) were applicable:

> Standard 4.11 provides that disbarment is appropriate when a lawyer intentionally or knowingly converts client property regardless of injury or potential injury. There are several instances . . . wherein respondent received funds in settlement of a case and failed to prepare a closing statement, make complete and proper distribution of the funds received and otherwise account for the funds despite repeated requests for same made by the client. I found respondent guilty of violating [Florida Rule] 5-1.1(b) . . . in Counts III, V, IX, XV, and XXV. This rule provides that a refusal to account for and deliver trust funds "upon demand shall be deemed a conversion."

Standard 4.41 provides that disbarment is appropriate when: (a) a lawyer abandons the practice and causes serious or potentially serious injury to a client; or (b) a lawyer knowingly fails to perform services for a client and causes serious or potentially serious injury to a client; or (c) a lawyer engages in a pattern of neglect with respect to client matters and causes serious or potentially serious injury to a client. There were numerous and repeated instances of respondent's failure to respond to inquiries of his clients about their cases and his constant and ongoing neglect of their cases.

Standard 7.1 provides that disbarment is appropriate when a lawyer intentionally engages in conduct that is a violation of a duty owed as a professional with intent to obtain a benefit for the lawyer or another, and causes serious or potentially serious injury to a client, the public, or the legal system. In this case, respondent unilaterally took fees from settlement funds while failing to prepare and obtain the required executed closing statement, and failing to otherwise properly and fully distribute the trust funds . . . . Standard 8.1(b) provides that disbarment is appropriate when a lawyer has been suspended for the same or similar misconduct, and intentionally engages in further similar acts of misconduct. Respondent was given a ten day suspension on August 13, 2009, in Case No. SC08-2292. That case involved four underlying files wherein respondent was found guilty of failure to properly communicate with his clients and failure to protect a client's interest upon termination of the representation. Respondent further failed to respond to the inquiry letters sent by the Bar on each of the four underlying files. Further, as set forth in Count I of the Complaint in the instant matter, respondent, a member of the New

> Jersey Bar, was suspended on August 12, 2009, for three months for gross neglect, lack of diligence, failure to keep a client adequately informed of the status of the case, and failure to cooperate with disciplinary authorities. Further, in Case No. SC09-1125, respondent was found guilty of contempt and given a three year suspension on June 17, 2010, for his conduct in failing to properly comply with a subpoena served on him for the production of documents. Respondent's continued failure to properly participate in the instant proceeding caused continued obstruction of the Bar's investigation, and was in derogation of his professional obligations in this disciplinary case. His misconduct has caused injury or potential injury to his clients, the public, and the legal system.
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> [OAEbEx.C at 75-77.]

The referee found, as aggravating factors, respondent's ethics history in Florida (a ten-day suspension, an emergency suspension, and a three-year suspension); a pattern of misconduct; multiple offenses; bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with rules or orders of a disciplinary agency; substantial experience in the practice of law; and indifference to making restitution. The referee also noted respondent's failure to comply with Florida Rule 3-5.1(g), requiring a suspended attorney to provide a copy of the suspension order to his client, opposing counsel and the courts, as well as an affidavit to the bar, verifying that he has done so.

On October 5, 2010, the Supreme Court of Florida approved the uncontested report of the referee and disbarred respondent for ten years. Respondent did not notify the OAE of his Florida disbarment, as required by R. 1:20-14(a)(1).

As indicated previously, the OAE seeks respondent's disbarment. The OAE recognizes that there is no New Jersey counterpart to Florida Rule 5-1.1(b), which states that the failure to account for and deliver trust funds shall be deemed a conversion, and that, consequently, it cannot be said that the Florida proceedings provide clear and convincing proof of knowing misappropriation. Nevertheless, the OAE's position is that disbarment is required because of respondent's "serious mishandling of personal injury settlements and the totality of respondent's other Florida misconduct." The OAE cited In re Needle, 180 N.J. 300 (2004), for the proposition that attorneys were disbarred for similar circumstances.

In Needle, the attorney

> took excessive fees from clients' personal injury settlements; engaged in unethical business transactions with clients; commingled personal and trust funds; failed to safeguard clients' funds; failed to promptly notify third parties that he had received funds to which they were entitled; failed to promptly deliver funds to third parties; made misrepresentations to disciplinary authorities, clients, other attorneys, the IRS, welfare agencies, and medical providers; failed to cooperate with

> disciplinary authorities, engaged in conduct prejudicial to the administration of justice, and violated the recordkeeping requirements of R. 1:21-6.
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> [In the Matter of Emanuel H. Needle, DRB 03-134 (January 29, 2004) (slip op. at 54-55.]

In urging respondent's disbarment, the OAE noted that respondent "engaged in a pattern of serious unethical conduct resulting in serious financial detriment to numerous clients, as well as conduct prejudicial to the administration of justice and failure to cooperate with the disciplinary authorities."

Noting the absence of mitigating factors, the OAE pointed to aggravating factors, namely, that respondent's conduct was not an isolated incident, that he has a substantial history of discipline, that his conduct was directly related to the practice of law, that he is not young and inexperienced, and that he did not notify the OAE of his Florida disbarment.

Following a review of the record, we determine 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 a disciplinary proceeding in this state. We, therefore, adopt the findings of the Supreme Court of Florida.

Reciprocal disciplinary 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:
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> (A) the disciplinary or disability order of the foreign jurisdiction was not entered;
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> (B) the disciplinary or disability order of the foreign jurisdiction does not apply to the respondent;
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> (C) the disciplinary or disability order of the foreign jurisdiction does not remain in full force and effect as the result of appellate proceedings;
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> (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; or
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> (E) the unethical conduct established warrants substantially different discipline.

A review of the record does not reveal any conditions that fall within the scope of subparagraphs (A) through (D). Subparagraph (E), however, requires close examination.

In Florida, an attorney's refusal or failure to account for funds received in trust shall be deemed a conversion, under Rule 5-1.1(b). Florida Standard 4.11 provides that disbarment is appropriate when a lawyer intentionally or knowingly converts client property, regardless of injury or potential injury.

In New Jersey, however, a lawyer's failure or refusal to account for trust funds in his possession is not tantamount to

knowing misappropriation but, rather, a failure to promptly deliver funds that a client or a third party is entitled to receive. RPC 1.15(b). If such conduct spurs an audit of the lawyer's trust account and the audit reveals that the lawyer used the funds without the client's consent, then the lawyer will be found guilty of knowing misappropriation. But mere failure to account for the funds and to promptly disburse them to their rightful owners does not constitute knowing misappropriation and is generally met with an admonition. See, e.g., In the Matter of Douglas F. Ortelere, DRB 03-377 (February 11, 2004) (attorney admonished for failure to promptly deliver balance of settlement proceeds to client after her medical bills were paid) and In the Matter of E. Steven Lustig, DRB 02-053 (April 19, 2002) (admonition imposed upon attorney who, for three-and-a-half years, held in his trust account $4800 earmarked for the payment of a client's outstanding hospital bill).

Similarly, other conduct mentioned in the referee's report as meriting disbarment is not necessarily met with disbarment in New Jersey. For example, Florida Standard 4.41 provides that disbarment is appropriate when a lawyer knowingly fails to perform services for a client and causes serious or potentially serious injury to a client, or engages in a pattern of neglect and causes serious or potentially serious injury to a client.

The referee noted respondent's numerous and repeated instances of failure to reply to inquiries from clients and his "constant and ongoing neglect of their cases."

In New Jersey, however, the above infractions typically result in a reprimand. See, e.g., In re Tyler, 204 N.J. 629 (2011) (consent to reprimand; in six bankruptcy matters the attorney was guilty of gross neglect, pattern of neglect, lack of diligence, failure to communicate with clients; in one matter the attorney communicated with a client represented by counsel; mitigation included the attorney's lack of a disciplinary history and her health and mental problems at the time of her misconduct) and In re Gellene, 203 N.J. 443 (2010) (attorney guilty of gross neglect, pattern of neglect, and lack of diligence; the attorney failed to timely file three appellate briefs, failed to communicate with his client in two of the matters and failed to appear on the return date of an order to show cause without notifying the court that he would not appear, which was considered conduct prejudicial to the administration of justice; aggravating factors included his ethics history: two private reprimands and an admonition; mitigating factors considered were his financial problems, depression, and serious personal problems).

Florida Standard 7.1, too, provides that disbarment is appropriate when a lawyer intentionally engages in conduct that is a violation of a duty owed as a professional with intent to obtain a benefit for the lawyer or another, and causes serious or potentially serious injury to a client, the public, or the legal system. The referee alluded to respondent's unilateral taking of fees from settlement funds "while failing to prepare and obtain the required executed closing statement and failing to otherwise properly and fully distribute the trust funds." In New Jersey, these violations may lead to discipline as little as an admonition. See, e.g., In the Matter of Steven S. Neder, DRB 99-081 (May 27, 1999) (admonition by consent for attorney who did not transmit to a wife funds that a husband, the attorney's client, had given him for that purpose and who took his fee from funds that the husband gave him to pay the wife's legal fees; the attorney violated RPC 1.15(b) and (c)).

Finally, Florida Standard 8.1(b) provides that disbarment is appropriate when a lawyer has been suspended for the same or similar misconduct, and intentionally engages in further similar acts of misconduct. The referee pointed to (1) respondent's ten-day suspension, on August 13, 2009, for failure to properly communicate with four clients, failure to protect a client's interest upon termination of the representation, and failure to

reply to the Bar's inquiry letter in the four cases; (2) his three-month suspension in New Jersey, on August 12, 2009, for gross neglect, lack of diligence, failure to keep a client adequately informed of the status of the case, and failure to cooperate with disciplinary authorities; and (3) his three-year suspension, on June 17, 2010, for failure to properly comply with a subpoena for the production of documents. The referee found that respondent's continued failure to properly participate in the Florida proceeding caused "continued obstruction of the Bar's investigation and was in derogation of his professional obligations in this disciplinary case," and that his "misconduct has caused injury or potential injury to his clients, the public, and the legal system."

In New Jersey, the repetition of unethical conduct that led to a prior suspension does not necessarily lead to disbarment. See, e.g., In re Horowitz, 186 N.J. 584 (2006) (attorney suspended for one year for violations that were strikingly similar to the ones that netted him a prior three-month suspension; In the Matter of Barry W. Horowitz, DRB 06-024 (April 12, 2006) (slip op. at 7)). If, however, the lawyer has an egregious ethics history evidencing a failure to learn from prior mistakes or the attorney has demonstrated utter disregard for his duty to cooperate with disciplinary authorities, then

disbarment may follow. See, e.g., In re Kivler, 197 N.J. 255 (2009) (disbarment for attorney who repeatedly agreed to represent clients, failed to undertake any work on their behalf, refused to refund their retainers, and refused to cooperate with disciplinary officials, including his refusal to file answers to the multiple ethics complaints filed against him; given the attorney's extensive ethics history, failure to appear before the Supreme Court on its order to show cause and eight subsequent defaults, the Court found that he had no regard for his obligations to the various arms of the attorney disciplinary system) and In re Horowitz, 188 N.J. 283 (2006) (disbarment for attorney who refused to cooperate with disciplinary authorities, allowed three disciplinary matters in New Jersey and one in New York to proceed as defaults, harmed clients in two states, and wasted judicial and disciplinary resources; the attorney also abandoned his clients' interests. In the Matter of Barry W. Horowitz, DRB 06-077 (June 20, 2006 (slip op. at 8-9)).

That being said, should the totality of respondent's conduct, viewed in the context of his disciplinary record in New Jersey and Florida, warrant disbarment?

To recap respondent's violations and disciplinary record, in Florida he received a ten-day suspension (failure to communicate with clients, "declining or terminating

representation of a client," and failure to cooperate with disciplinary authorities) and a three-year suspension ("contemptuous failure to comply with a subpoena" issued in a disciplinary case), besides having been "emergency" suspended. In New Jersey, he received a three-month suspension (default; lack of diligence, gross neglect, failure to communicate with a client, and failure to cooperate with disciplinary authorities) and a censure (default; failure to file the affidavit in compliance with R. 1:20-20, following his three-month suspension). In the matters that prompted his ten-year disbarment in Florida, respondent mishandled thirteen client matters. The violations included conversion of client funds (that is, failure or refusal to account for or deliver trust funds), lack of diligence, pattern of neglect, failure to communicate with clients, improper contingent fee, failure to comply with clients' instructions, failure to maintain required records, failure to make prompt disposition of funds, and failure to cooperate with disciplinary authorities (including failure to file an answer to the complaint).

Altogether, respondent violated the equivalent of the following New Jersey RPCs: 1.1(a) (gross neglect), 1.1(b) (pattern of neglect), 1.2(a) (failure to abide by the client's decisions concerning the scope and objectives of the

representation), 1.3 (lack of diligence), 1.4(b) (failure to properly communicate with the client), 1.4(c) (failure to explain the matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation), 1.5(c) (improper contingent fee and failure to provide the client with a written statement at the conclusion of the matter), 1.15(b) (failure to promptly remit funds that a client or third party is entitled to receive), 1.15(d) (recordkeeping violations), 8.1(b) (failure to cooperate with disciplinary authorities), and 8.4(d) (conduct prejudicial to the administration of justice).

Attorneys who have committed numerous violations in multiple client matters in New Jersey have typically received suspensions ranging from six months to one year. See, e.g., In re La Vergne, 168 N.J. 410 (2001) (six-month suspension for attorney who mishandled eight client matters; the attorney exhibited lack of diligence in six of them, failure to communicate with clients in five, gross neglect in four, and failure to turn over the file upon termination of the representation in three; in addition, in one of the matters the attorney failed to notify medical providers that the cases had been settled and failed to pay their bills; in one other matter, the attorney misrepresented the status of the case to the

client; the attorney was also guilty of a pattern of neglect and recordkeeping violations; no evidence of mental illness; no prior discipline); In re Lester, 148 N.J. 86 (1997) (six-month suspension for attorney who displayed lack of diligence, gross neglect, pattern of neglect, and failure to communicate in six matters, failed to cooperate with the investigation of the grievances, and allowed the disciplinary matter to proceed as a default; in one of the matters, the attorney misrepresented, in a letter to his adversary, that the adversary's secretary had consented to extend the time to file the answer; the attorney had received a reprimand in 1990 for gross neglect in two matters (at which time the Court noted the attorney's recalcitrant and cavalier attitude toward the district ethics committee) and another reprimand in 1996 for failure to communicate with clients, failure to supervise office staff and failure to release a file to a client); In re Pollan, 143 N.J. 305 (1996) (attorney suspended for six months for misconduct in seven matters, including gross neglect, pattern of neglect, failure to communicate with clients, failure to deliver a client's file, misrepresentation, recordkeeping improprieties, and failure to cooperate with ethics authorities; clinical depression alleged; no prior discipline); In re Chamish, 128 N.J. 110 (1992) (six-month suspension imposed for misconduct in

six matters, including failure to communicate with clients and lack of diligence; in one of the matters, the attorney represented both driver and passenger in a motor vehicle case and then filed suit on behalf of the driver through the unauthorized use of another attorney's name and forgery of the attorney's signature on the complaint; no prior discipline); In re Martin, 118 N.J. 239 (1990) (attorney suspended for six months for engaging in a pattern of neglect in seven matters for a period of five years, by routinely failing to conduct discovery and to apprise clients of the status of their cases; in two matters, the attorney entered into settlement agreements without the clients' consent and, in one matter, advanced funds to a client; more seriously, during a meeting with a client, the attorney put a gun and a box of bullets on his desk in a menacing way, thereby frightening the client; no prior discipline); In re Lawnick, 162 N.J. 113 (1999) (one-year suspension for attorney who agreed to represent clients in six matters and took no action, despite having accepted retainers in five of them; the attorney also failed to communicate with the clients and to cooperate with the investigation of the ethics grievances; the matter proceeded on a default basis; on the same date that the attorney was suspended for six months, the Court suspended him for three months for lack of diligence, failure to

communicate with the client, failure to surrender documents and failure to cooperate with disciplinary authorities; that disciplinary matter also proceeded as a default; prior temporary suspension); In re Marum, 157 N.J. 625 (1999) (attorney suspended for one year for serious misconduct in eleven matters, including lack of diligence, gross neglect, failure to communicate with clients, failure to explain the matter to clients in detail to allow them to make informed decisions about the representation, misrepresentation to clients and to his law partners, which included entering a fictitious trial date on the firm's trial diary, and pattern of neglect; the attorney also lied to three clients that their matters had been settled and paid the "settlements" with his own funds; the attorney's misconduct spanned a period of eleven years; in aggravation, the attorney had two prior admonitions, failed to recognize his mistakes, and blamed clients and courts therefor); and In re Herron, 140 N.J. 229 (1995) (one-year suspension for attorney who engaged in unethical conduct in seven matters; the attorney either grossly neglected them or failed to act with diligence, failed to keep the clients informed of the progress of their matters and, in two cases, misrepresented their status to the clients; the attorney also failed to cooperate with disciplinary authorities; no prior discipline).

Here, the number of client matters that respondent mishandled in Florida totaled at least thirteen,[7] approximately double the number at issue in Lester, Pollan, Chamish, and Martin (six-month suspension) and Lawnick and Herron (one-year suspension). Moreover, the attorneys in La Vergne, Pollan, Chamish, Martin (six-month suspension cases), Lawnick, and Herron (one-year suspension cases) did not have a record of final discipline. And even those with a record had received either admonitions or reprimands, unlike respondent, who has been suspended on several occasions. Finally, unlike respondent, neither the attorneys in La Vergne, Chamish, and Martin, all of whom were suspended for six months, nor Marum, who was suspended for one year, were found guilty of lack of cooperation with disciplinary authorities.

As to this latter violation, a common thread running through respondent's disciplinary matters is his breach of his duty to cooperate with disciplinary officials in both New Jersey and Florida. Every single discipline that respondent received involved some form of failure (or refusal) to cooperate with ethics authorities, whether it was a lack of response to their inquiries (he failed to reply to twenty-two letters from the

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[7] The record does not reveal the number of clients aggrieved in the matter that resulted in respondent's ten-day suspension.

Florida Bar), or a failure to comply with a subpoena for the production of documents, or a failure to file answers to ethics complaints, or a failure to comply with a Court order. In two instances, respondent did not file the required affidavits of compliance with the rules governing suspended attorneys. And he did not notify the OAE of his disbarment in Florida. This troubling pattern of misconduct reflects more than lack of cooperation. It shows a lack of respect for disciplinary personnel, agencies, and tribunals that rises to the level of defiance.

Respondent also demonstrated an appalling lack of concern for his clients' well-being. In the first New Jersey matter, he received $47,000 in settlement proceeds. Because of his failure to return a release to his adversary, the monies were ultimately deposited with the court. As of the date of the formal ethics complaint in that disciplinary matter -- or more than two years after the case was settled -- the client still had not received her settlement funds. Furthermore, thirteen Florida clients were affected by respondent's inaction.

Nothing in the record shows that respondent's ethics lapses were the result of illness or circumstances that would explain, although not condone them. His lack of participation in his disciplinary proceedings leads to no other conclusion but that

`this thirty-eight-year old attorney, who began to behave unethically two years after his Florida bar admission, does not care about the maintenance of his attorney license, either in Florida or in New Jersey. Like attorney Horowitz, he has harmed clients in two states and has steadily refused to cooperate with disciplinary authorities. No discipline short of disbarment is appropriate in these circumstances. We recommend that the Court disbar respondent.

Chair Pashman 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, Vice Chair

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

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Kenneth P. Sirkin
Docket No. DRB 11-413

Argued: February 16, 2012

Decided: May 9, 2012

Disposition: Disbar

Members	Disbar	Suspension	Reprimand	Dismiss	Disqualified	Did not participate
Pashman						X
Frost	X					
Baugh	X					
Clark	X					
Doremus	X					
Gallipoli	X					
Wissinger	X					
Yamner	X					
Zmirich	X					
Total:	8					1

Julianne K. DeCore
Julianne K. DeCore
Chief Counsel