XIV-94-311E

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 95-042

IN THE MATTER OF :
:
WILLIAM C. ISRAEL :
:
ATTORNEY AT LAW :

Decision of the
Disciplinary Review Board

Argued: April 19, 1995

Decided: November 14, 1995

Richard J. Engelhardt 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 was before the Board on a motion for reciprocal discipline filed by the Office of Attorney Ethics (OAE), based upon respondent's three-year suspension in the State of New York for ten instances of professional misconduct.

Respondent has been a member of the New Jersey bar since 1987 and the New York bar since 1986. On November 3, 1994, the Appellate Division of the Supreme Court of New York, First Judicial Department, found that respondent neglected four criminal matters entrusted to him and that his conduct in those matters reflected adversely on his fitness to practice law. The Court also found that respondent neglected two civil matters, handled a legal matter incompetently and without adequate preparation, engaged in conduct

prejudicial to the administration of justice and failed to carry out a contract of employment.

Respondent failed to notify the OAE of his New York suspension, in violation of R. 1:20-7(a) (currently R. 1:20-14(a)).

The New York Court summarized respondent's misconduct as follows:

> Between September 1989 and November 1991, respondent was assigned to represent four different criminal defendants on their appeals to the Appellate Division, Second Department, under that Court's appellate assigned counsel program. . . . On each of these cases, respondent took no action to perfect or withdraw the appeals, did not apply to be relieved as counsel, and ignored requests from the Clerk of the Court regarding the status of the appeal, even after referral to the Department Disciplinary Committee was threatened. The Second Department issued orders between July 1991 and September 1992, relieving respondent of his representation in all four cases. . .
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> During the disciplinary hearings on these matters, respondent claimed that he had spoken by telephone with the Chief Clerk of the Second Department concerning one of these cases, a statement which was directly contradicted in testimony by the Clerk himself. When asked to verify these telephone contacts, respondent first testified that the file had been lost when his office was vandalized (an act which, it was later shown, had occurred after his files were subpoenaed by the Committee). Respondent produced as a witness the former client in this case, whose testimony was of no help to the defense. In fact, it was obvious from the testimony that the client did not even appreciate the significance of these proceedings, apparently having been led to believe instead that the hearing concerned the substance of his own criminal appeal.
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> . . . In the first [civil matter], respondent's considerable delay, due in part to his own procedural irregularities, resulted in no action for a matrimonial client. When the client sued him in Small Claims Court for return of the $1300 retainer fee, respondent thrice moved for dismissal of the action, only to default each time on his own motions. These motions were clearly designed to harass his client, and the second and third motions were brought after the Administrative Judge of the Civil Court had specifically cautioned respondent not

> to bring such a motion without prior approval of the Court. Execution of the client's Small Claims judgement was frustrated when respondent withdrew all his funds from his account on the eve of service of a bank levy.
>
> In the second civil matter, respondent procrastinated in pursuing a simple proceeding to obtain a name change. He offered as an excuse the suggestion that the client had not paid him in full, despite the introduction of his handwritten receipt indicating that the fee had been 'paid in full' in advance. Respondent told the hearing panel that he had written to his client about this 'mistake' on the receipt, but was unable to produce a copy of such letter, again offering as an excuse the fire which had destroyed his files, even though the Committee's subpoena of his records had predated the fire.
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> The evidence was more than ample to sustain each of the ten charges. Respondent's defense was noteworthy by its absence of contrition and a dearth of evidence in mitigation, and his testimony was marked by a general lack of candor and several instances of outright falsehood. In light of these aggravating factors, the recommended sanction is appropriate and warranted, despite the absence of a prior disciplinary record.
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> [Exhibit A to OAE letter-brief and appendix, dated January 25, 1995, at 4-6].

Respondent disagreed with the New York Court's characterization of his testimony during the disciplinary hearings on these matters, asserting that his inability to produce records was perceived by the panel as a lack of candor. He claimed that his explanation for the whereabouts of such records was misinterpreted as implying that such records were stolen or burned. Respondent denied harassing his client by defaulting on the three motions, asserting that on the first court date he was confused about the date, on the second court date both he and the client appeared, but the case was not on the calendar, and on the final court date, he did not appear in court because he had already offered to reimburse the client for the retainer plus interest.

Respondent also denied attempting to frustrate the execution of the Small Claims Court judgment, noting that he had no knowledge as to when the marshal was going to levy the bank account and, further, that he maintained other accounts at the bank, which could have been frozen.

However, respondent did admit that in the four criminal matters he failed to file any briefs, did not file a motion to withdraw as counsel, and did not forward any correspondence of any nature to the Appellate Division. Respondent also conceded that in the civil matrimonial matter he "did not provide all of the necessary pleadings to constitute a complete submission for divorce judgment or provided the incorrect submission fee to have the matter assigned to a judge." He suggested that "because of trial commitments and a demanding case load, [he] was not able to dedicate the type of time to complete the divorce as expeditiously as possible." In addition, respondent conceded that, in the name change matter, he did not carefully explain to his client the nature and extent of the fees involved.

The OAE has requested the imposition of a reciprocal suspension for three years.

* * *

Upon review of the full record, the Board has 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 the Board rests for purposes of a disciplinary proceeding), the Board adopts the findings of the New York Supreme Court, Appellate Division that respondent neglected six client matters, handled one matter incompetently and without adequate preparation, engaged in conduct prejudicial to the administration of justice, and failed to carry out a contract of employment, all in violation of RPC 1.1(a) and (b), RPC 1.3, and RPC 8.4(d). In addition, respondent failed to notify the OAE of his New York suspension, in violation of R. 1:20-7(a) (currently R. 1:20-14(a)).

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 upon which the discipline in another jurisdiction was predicated that it clearly appears that:
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> (A) the disciplinary . . . order of the foreign jurisdiction was not entered;
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> (B) the disciplinary . . . order of the foreign jurisdiction does not apply to the respondent;
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> (C) the disciplinary . . . 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
>
> (E) the misconduct 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. Based on subparagraph E, however, the Board believes that similar behavior in New Jersey would warrant less severe discipline than a three-year suspension.

Respondent's misconduct -- neglect of six client matters, failure in one matter to act competently and without preparation, failure to complete a contract of employment, failure to notify the OAE of his New York suspension, compounded by the New York Court's conclusion that respondent sought to harass his client and made falsehoods to the tribunal-- is analogous to the sort of misconduct that has resulted in two-year suspensions instead of three-year suspensions. See In re Foley, 130 N.J. 322 (1992) (two-year suspension for engaging in a pattern of neglect, failure to communicate, misrepresentation, and failure to cooperate with the disciplinary authorities in three client matters); In re De Pietropolo, 127 N.J. 237 (1992) (two-year suspension for gross neglect, lack of diligence, failure to communicate with client, misrepresentation to client, charging unreasonable fees, failure to return documents and unearned fees, and failure to cooperate with ethics authorities in five client matters); In re Mintz, 126 N.J. 484 (1992) (two-year suspension for engaging in a pattern of neglect and abandonment in four cases, failure to communicate, failure to maintain a *bona fide* office, and failure to cooperate with ethics authorities).

In light of the foregoing, the Board unanimously determined to

grant the OAE's motion for reciprocal discipline, but to suspend respondent for a period of two years, instead of three, as in New York. One member did not participate.

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

Dated: 11/14/97

By: _____
Lee M. Hymerling
Chair
Disciplinary Review Board