SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB. 96-430

IN THE MATTER OF :

JOSEPH SKRIPEK :

AN ATTORNEY AT LAW :

Decision

Argued: January 23, 1997

Decided: June 8, 1998

Richard J. Engelhardt appeared on behalf of the Office of Attorney Ethics.

Henry J. Franzoni, Jr. appeared on behalf of respondent.

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 on an order of disbarment in New York after respondent submitted his resignation from the bar of that state. Respondent's decision to tender his resignation arose out of a pending ethics investigation in New York, following a New York judge's ruling of civil contempt for respondent's failure to obey a court order.

Respondent has no disciplinary history. In 1996, the OAE filed a motion for respondent's temporary suspension in New Jersey, which was denied.

For thirty-two years, since his 1965 admission to the New Jersey bar, respondent has practiced law almost exclusively in New Jersey. He never had a New York practice. In New Jersey, he has served as township attorney in Fairfield, assistant counsel to the Essex County Welfare Board and a senatorial aide. He has also been actively involved in political, fraternal and public service organizations in this state. Born in a family of modest economic means, respondent became financially successful as an attorney.

In order to put respondent's conduct in proper context, a detailed factual background is required.

Respondent resided in Verona for forty-six years. In 1989, then married for the second time, he bought a farm in Goshen, New York, so that his wife could raise horses. Although respondent maintained a residence in New York for tax purposes — the farm losses were deductible against his law office income — his driver's license, voter registration and law practice remained in New Jersey. Respondent never moved his domicile from New Jersey. He became a New York lawyer in 1989, under the then applicable reciprocity rule between New Jersey and New York. In a thirty-two-page certification attached to his brief to the Board, respondent recounted the circumstances that led to the New York grievance against him:

> 13. I was married to Judi Rolin in September, 1985. At the time we were married, she was the owner of a home in Franklin Lakes, New Jersey.
>
> 14. I owned a two family house which I sold in 1986, using the proceeds to purchase and renovate a vacation farm in Canada. I owned a new Jaguar, a cabin cruiser, a new Toyota pickup truck, one-third of an office building,

IRA's and a law practice in Wayne, New Jersey. I had perfect credit.

15. Upon our marriage, I refinanced my wife's farm in 1986, paid off her mortgages and paid the new one. I also financed the education of her college-aged son and supported her children by her previous marriage, as she was in constant litigation, which I conducted for her, with her ex-husband over support, custody, and education. I also provided her with an apartment in New York which she used as a studio. I financed her various attempts to get work in the theater, she being a former actress and singer.

16. We lived comfortably until 1989 when she was determined to become a horse trainer and breeder of a specialized breed of horses called American Paso Finos.

17. She found, and we contracted to purchase, a 129 acre farm, with a new house constructed in 1985, a large barn, an indoor arena, located in Goshen, New York. We borrowed the $55,000 down payment from a friend of hers, and gave back a mortgage of $155,000 to the owners, as well as taking a mortgage on the property in the amount of $250,000. She arranged for, and I executed, a refinance of the Franklin Lakes farm for $575,000. The new farm cost $400,000. My wife proceeded to totally reconstruct the house with new siding, new windows, new decks, new bathrooms, a new kitchen, radiators instead of base board heat, rearranged walls, etc., etc. She purchased 20 horses, hired help, etc., at a cost in 1989 alone of $251,776.31. I could cite stories for hours of her uncontrollable extravagances. We hemorrhaged money.

18. In September of 1989 we peaked at $1,672,000.00 in debt. I frankly never knew until well on into the divorce how much. In order to carry this debt I borrowed almost $100,000 from my credit cards, I sold my boat, my Jaguar, my IRA's. We borrowed from friends and relatives. I sold my office building and used the $80,000 profit to keep going. We lived like mice in a beautiful castle. We put the farm on the market and struggled through, but were unable to sell it. My mother loaned us $50,000, my sister in law, $20,000. My wife could not sell horses at a profit, and we foundered.

19. In 1990, due to a change in political winds, I lost my municipal position, along with a relatively steady income. Our builder clients all went under in the crash of '89-90 and my partner left to go back to run his family business.

20. In 1987, I had income of $72,836. In 1988, I had income of $128,900. In 1989, due to the farm losses, I had a negative $44,924. In 1990, I lost $32,627. In 1991, I had income of $18,108, including the office building sale gains of $80,000. In 1992, I had income of $14,838. In 1993, I lost $6,691, and in 1994, I had income of $8,103. These are according to tax returns filed.

21. We were losing approximately $150,000 per year on the farm. I was simply unable to keep up with the interest and payments. The Franklin Lakes farm went into foreclosure, as did the Goshen farm in 1994. My Uncle Phil, who practically lived with us the last two years of his life, gave me $93,000, eight months before he died. I used most of that to stave off the foreclosure of the Goshen farm until 1994.

* * *

23. In September of 1993, I had advised my wife that the horses would have to go by January and the farm immediately thereafter. She told me if it was between the horses and me, I would lose. I should have listened to her.

24. We had been in constant negotiations with the farm mortgage lender to refinance the credit card debt and others, and to give us funds to hold on until we could sell. In January, 1994, I had worked up terms of the refinance and had been keeping up the mortgage just to keep our credit. The final approval and paperwork were ready in March of 1994.

25. My wife, after consultation with her attorney (I had no knowledge), advised me that she would not join in any refinance. We were sitting in the den where I was outlining the terms of the refinance as dictated by the bank. All of a sudden my wife got up and started telling me she would not agree, first loud and then screaming. I told [her] I agreed that the bank was overreaching, but she should stop yelling at me, I was on her side. She responded, 'I'll yell at you anytime I want.' She then for no apparent reason picked up a large canvas bag of hers and threw it at me. I was seated with my legs up on a hassock. I deflected the bag with my legs and incredulously said, 'Don't throw things at me.' She picked up the bag, saying, 'I'll throw anything I want at you', and threw it again. I deflected it, again repeating myself. I was not angry, just taken off guard. Her actions were completely unexpected. When she picked the bag up again and started to throw it again, I got up and grabbed her right arm with my left, stopping her swing. She immediately said, 'Ouch, you've hurt me. I am going to file a domestic violence complaint with the police.' I responded, 'You son of a bitch. You've set me up.' She called the police. She returned and advised me that she was not filing a complaint, but

merely a record of my 'attack'.

26. The following morning, at 11 a.m., a divorce complaint was filed by her attorney. I was not advised.

27. On Thursday, three days later, I received a call in my office in New Jersey, wherein I was directed by the Goshen police to surrender in New York, as a warrant had been issued for my arrest for harassment. I advised him that I would file a complaint for her attack against me, but I was informed that in Orange County only the first to file a complaint has any right to file criminal complaints. This policy was later confirmed by the local magistrate and assistant prosecutor. No charges for any crime would be accepted against my wife while charges were pending against me.

* * *

33. In September [1994], the realtor had a prospective tenant for the farm. I made a motion to require my wife to join in a lease. She countered that she needed to live there, in the six bedroom house, alone, and for pendente lite support. The farm was by then in foreclosure and the loan called. She had just received $55,000 from [a] negligence case, which she did not disclose, instead claiming poverty. She submitted false figures of my income and assets. The Court ordered me to pay her $1,000 per month for support and up to $4,000 per month in payment of the mortgages, taxes and utilities. I advised the Court I could not possibly meet the order. A Judge Rosato advised me a hearing would be held on the issue if I did not pay.

34. I did not pay the mortgage, for it could be not paid, and I had not the funds to do so. It had been called earlier. My wife then sold a Kabuto tractor and equipment that I had just paid off, after four years of payments of almost $20,000, for $5,500, along with other farm equipment. I considered it stolen since I held title, and when I attempted to file with the local police and prosecutor for theft, [I] was advised that they had contacted the new judge in my matrimonial case, now the Honorable John P. DiBlasi, and they were directed by him not to take any criminal complaint against my wife, so they refused. I had made a motion to get a credit for that sale and for a reconsideration of the support order which I could not possibly meet. New York does not consider motions expeditiously. It takes months to get an answer. The following month I made another motion for various relief, including a reduction.

35. Judge DiBlasi denied my motions, and upon my adversary advising the him [sic] that the papers he had received had one page, the face page, missing, the Court took the occasion to advise me he was not inclined to believe anything I said and to berate me in open court for intentionally serving incomplete papers and directing that a motion be made to hold me in contempt for failure to pay the $5,000 per month. The Court had also sanctioned me $2,500 for making a second motion to relieve me of the support order and other remedies while a previous motion was pending. So began my relationship with Judge John DiBlasi.

36. At the civil contempt hearing, the plaintiff presented no evidence as to my ability to pay. The Court had me testify first and applied a presumption to all of the elements of proof. I had to prove I couldn't pay, didn't have assets, and had not wilfully refused to pay. I presented complete records and extensive testimony which Judge DiBlasi, true to his word, refused to believe. He then applied a presumption of ability, and found me guilty of civil contempt.[1] He ordered me to continue the payments, which my evidence indicated was equivalent to about twice my income, and ordered me to pay $10,000 towards the 'arrearages' and post a $20,000 bond for future arrearages, or be jailed weekends until I did.

* * *

38. I consulted one of the foremost bankruptcy attorneys in New Jersey***and was advised that a Chapter 13 filing would alleviate all of the credit cards, stop the foreclosure of the farm, stop the judge's weekend 'incarceration or pay' order, and provide me with a method of payment of the arrearages. If I stopped the credit card payments, this would enable me to pay the $1,000 per month support. It was not a perfect solution, but a legally acceptable one. I filed bankruptcy just in time to stop the foreclosure. Judge DiBlasi assumed that I filed to stop enforcement of his order, and became irate at being cheated of his authority. He denied all my requests, thorough [sic] my attorney, assumed other requests which he then also denied to make his position clear, and proceeded to notify the various ethics committees and the New York warrant computer. Attorney spectators in the courtroom, upon hearing the judge's ravings, joked to my attorney that I better stay in New Jersey. As is so often the case, much truth was said in jest.

* * *

---

[1] Although at the time of the Board hearing there was an appeal pending on the contempt ruling, the Board was informed that the trial court's decision has been affirmed.

41. ***I retained [a bankruptcy attorney] and upon his advice and guidance, filed Chapter 13 Bankruptcy to prevent the sale of the farm and business assets. I was advised that under the law of bankruptcy, a Chapter 13 filing automatically initiated a stay of all proceedings to collect any debt, including the foreclosure, and also including alimony and support, pending the approval of a plan or reorganization. There was no question that the intent of the court order at the time was the collection of monies.

42. The Court was so noticed, and I did not appear at the hearing to be arrested, in accordance with the advice of my counsel, and his and my understanding of Federal law. It was extremely apparent from the previous appearances before Judge DiBlasi that he noted my status as a New Jersey attorney, and was angry at my inability to perform his court orders. He further found my reasons, although undisputed by any evidence, to be not credible. The first time I appeared before him, prior to any evidence, he indicated clearly that he was not going to believe anything I said.

43. On August 10, all my creditors and Judge DiBlasi were notified of the filing and the automatic stay of all proceedings. All complied with the Federal law but Judge DiBlasi, who assumed that the same dispensations affecting alimony and support in a Chapter 7 filing were operative in a Chapter 13. He then found that since he determined the federal stay did not apply to his orders to pay, I was in contempt, and he issued a warrant for my arrest.

44. ***That warrant was custom designed for this proceeding. It actually addressed itself to the New Jersey authorities as well as to New York officers to arrest me. It specifically does not order me to do anything. It was also a direct violation of federal law as far as I was concerned, and void. When I appeared in Passaic County Court, and the Court was notified of its existence, the New Jersey Court refused to honor it.

* * *

45. On or about September 12, 1996, Judge DiBlasi notified the State of New York Committee of Professional Standards, Third Judicial Department, of his order of contempt. The Committee also received copies of his decisions and orders, and the warrant.

46. On November 9, 1995, this Committee demanded from me a response***.

47. I answered these charges as requested. The proceedings were terminated by letter dated November 30, 1995.

* * *

49. Judge DiBlasi notified the Supreme Court of New Jersey, Office of Attorney Ethics, ***with an identical in content, letter. No action was taken to my knowledge on this complaint until the present proceedings***.

50. Judge DiBlasi also sent an identical complaint to the State of New York Grievance Committee for the Ninth Judicial District. That Committee, by letter of September 22, 1995, notified that it had issued a sua sponte complaint based on [allegations of conduct prejudicial to the administration of justice and adversely reflecting on fitness to practice law, stemming from respondent's failure to obey the judge's order and to surrender as a result of the arrest warrant].

[Exhibit M to respondent's brief to the Board]

After respondent filed a written reply to the ethics grievance, the New York committee served him with a notice of deposition and a notice to produce documents. Respondent appeared at the deposition and supplied documents and files relating to the charge. He agreed to submit other records then requested. He also informed counsel for the committee that he would probably resign from the New York bar. According to respondent, he had decided to give up his New York license even before the May 17, 1996 deposition, yielding to advice received from his then attorney, as well as his physicians, who had "advised him to end the situation at all costs." In counsel's brief to the Board, respondent's mental state at that time was described as follows:

> A person in a '***major depressive state***', who is subject to '***episodes of crying uncontrollably, at minor or no causative events***', who '***has feelings of hopelessness, ***frustration***' and who has exhibited '***inability to anticipate the gravity or reality of his decisions, and just poor judgment***, (Certification of Dr. Papowitz, paragraphs 5 & 6 — Exhibit 'O'), who is under medical care for coronary artery disease, hypertension and diabetes, (Affidavit of Dr. Melamed, Exhibit 'P') and urological problems, (Affidavit of Dr. DiTrolio, Exhibit 'Q') and who finds himself in the middle

of a one-sided divorce action which, after a failed marriage that cost him over $1,500,000 and left him physically and mentally ill, debt-ridden and penniless, trying to sustain what is, at best, a futile salvage operation, and whose only hope for a 'fair shake' is a judge who advises him at his first appearance before him that he has no credibility with the court; who berates him at every turn; who denies him the right to file motions in the course of the litigation because of what he deems, without factual or legal justification, to be 'harassment'; who denies him and his attorney the right to defend the charges against him; (see affidavit of Derick January, Esq.- Exhibit 'R'), who holds him in civil and criminal contempt without due process; who jails him for eighteen days in solitary confinement in a maximum security prison full of thieves and murderers, and who, as the final coup, himself puts in motion the inexorable machinery of the ethics grievance process for the purpose of taking away the only thing of value left to him...his lawyer's license.

Can we expect his judgment to be clouded? Perhaps the question is best answered by Dr. Papowitz, who, referring to Mr. Skripek's resignation from the New York Bar as 'terminating that pressure point', states that 'This inability to make appropriate judgments as to his own life and situation is consistent with his mental state.' (Exhibit O, para 13)

[Respondent's brief to the Board at 6-7]

On May 31, 1996, respondent signed a certification in support of his resignation request:

4. I am aware of a pending investigation by the Grievance Committee of the Ninth Judicial District into allegations of professional misconduct concerning, among other things, contempt of court for failure to appear in court.

5. I acknowledge that if charges were predicated upon the above mentioned allegations, I could not successfully defend myself on the merits against such charges.

[Exhibit B to OAE's brief]

On August 12, 1996, the Supreme Court of the State of New York, Appellate Division, Second Judicial Department, accepted respondent's resignation from the New York bar. The order states as follows, in part:

> ORDERED that the resignation of Joseph Skripek is accepted and directed to be filed; and it is further
>
> ORDERED that *** effective immediately, the respondent, Joseph Skripek, is disbarred and his name is stricken from the roll of attorneys and counsellors-at-law***.
>
> [Exhibit A to OAE's brief]

According to respondent, during his first conversation with New York disciplinary counsel about resignation, the word "disbarment" did not come up; when counsel sent him a resignation form, however, she noted that the order would state "disbarment:"

> 80. She noted that the order would state disbarment. This had not been discussed. I advised her that I did not want the word disbarment used, as I was concerned with my malpractice insurance, which I remembered asked a question about it. She advised me that it was in the form, and that the New York Courts routinely use the verbiage, and it had to be included. I indicated my reservation, that I was just resigning***.
>
> [Exhibit M to Respondent's brief to the Board]

Respondent signed the resignation form, nevertheless. As noted above, the New York Court disbarred him on August 12, 1996. In New York, disbarment is equivalent to a seven-year suspension. No formal ethics complaint was ever filed against respondent in New York.

* * *

There is some discussion in the record about respondent's disregard of his obligation to notify the OAE of his discipline in New York. The OAE charged that "respondent failed

to notify the Office of Attorney Ethics of his New York suspension, as required by R 1:20-14(a)(1). The Office of Attorney Ethics was notified of the suspension by the New York Departmental Disciplinary Committee for the Ninth Judicial District."

Respondent, in turn, argued that no one in New York had mentioned reciprocity. According to respondent, New York disciplinary counsel had informed him that the New Jersey ethics authorities would be notified; hence his understanding that he did not have to take any action in this regard. In addition, respondent claimed, he had been in touch with the OAE several times before he completed the New York resignation form, in order to "get an idea as to what I could expect in New Jersey in my fact pattern." He had been told by the OAE that an attorney who twice had been held in contempt in New York had been sanctioned in New Jersey. According to respondent,

> 86. ***I indicated that I did not think that was comparable to myself who, on the advice of counsel and Chapter 13, had failed to show up for one hearing and had been charged with contempt under a judicial law which has no comparison in New Jersey. I had looked at cases on contempt, including one that went to the Supreme Court of the United States, wherein the New Jersey system would have never allowed the judge to sit in the trial. I was sure that Judge DiBlasi's actions would find no sympathy in New Jersey.
>
> 87. I told [the OAE] that I just wanted to end the New York proceedings. [The OAE] agreed that it was probably a good idea to get it over with and get on with my life. After speaking with [the OAE], I felt a lot better about filing my resignation. At no time did [the OAE] mention reciprocity or disbarment.
>
> 88. I do not say that [the OAE] promised me anything or even advised me to do anything. [The OAE] appeared to be helpful. [The OAE] was aware of my case***. I told [the OAE] generally what it was about, and that I had no confidence in getting a fair hearing in New York. I am sure I acknowledged that [the OAE] would look at the facts, and I expected an investigation. I

never expected a reciprocity motion for disbarment or sanctions for a relatively minor contempt***.

* * *

92. I never read the New Jersey rules concerning reciprocity. It may seem elementary, but it just never occurred to me to research the subject. If I had known that there were any such sanctions, much less disbarment, I would never have resigned***.

93. It just seemed so easy at the time to resign and end some of the aggravation. A simple way to make my life less complicated. Give up a useless title which was actually a financial liability and gain some peace in the turmoil which my life had become. What a disastrous mistake.

[Exhibit M to Respondent's brief to the Board]

* * *

During the course of the divorce action in New York, respondent's wife made some allegations that respondent had mishandled the estates of his mother and uncle. More specifically, respondent's wife insinuated that respondent was hiding monies from her. Judge DiBlasi ordered an audit of respondent's personal and business accounts. In addition, New York disciplinary counsel questioned respondent extensively on this issue. The OAE, too, apparently conducted a random audit in June 1996. See Exhibit E to respondent's brief to the Board. Nothing in the record points to any financial wrongdoing.

The OAE, nevertheless, argued that respondent's decision to resign from the New York bar was motivated chiefly by his desire to avoid any further inquiries into his handling of the two estates, rather than caused by Judge DiBlasi's contempt ruling.

The OAE asked that respondent be given an indefinite suspension and that he may not be permitted to petition for reinstatement in New Jersey until he is reinstated in New York. In essence, the OAE urged a suspension of no fewer than seven years as, in New York, a disbarred attorney may apply for restoration to the practice of law after seven years.

* * *

Following a de novo review of the record, the Board determined to grant the OAE's motion for reciprocal discipline and to impose a reprimand.

Reciprocal disciplinary proceedings in New Jersey are governed by R. 1:20-14(a):

> 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:
>
> (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; or
>
> (E) the misconduct established warrants substantially different discipline.

Nothing in the record indicates any conditions that would fall within the ambit of subparagraphs (A) through (D). Subparagraph (E), however, is applicable, in the sense that

ordinarily a finding of contempt alone does not subject an attorney to a seven-year suspension in New Jersey, much less to disbarment.

The OAE argued, however, that in reciprocal discipline cases the New Jersey Supreme Court normally defers to the determination of discipline reached by the other jurisdiction, citing In re Bray, 137 N.J. 300 (1994), and In re Scotto, 127 N.J. 239 (1992).

In Bray, the attorney was disbarred by default in New York, after she failed to answer a formal ethics complaint charging her with gross neglect, failure to communicate with the client and failure to cooperate with the New York disciplinary authorities. Acknowledging that the ethics offenses charged in New York would not have resulted in disbarment in New Jersey, the OAE recommended that the attorney be indefinitely suspended in New Jersey until reinstated in New York. The Board and the Court agreed with the OAE's recommendation. The Board considered that, in New York, an attorney disbarred by default may apply to reopen the matter prior to the expiration of the seven-year period of disbarment. Hence the Board's decision to grant the OAE's request for an indefinite suspension in New Jersey until the attorney's reinstatement in New York. Under these circumstances, it cannot be said that, in Bray, New Jersey imposed discipline identical to New York's — a seven- year suspension — although at first glance such impression could be conveyed. In reality, New Jersey suspended the attorney for an indefinite period of time, allowing for the possibility that, at any time, the attorney might make an application to vacate the New York default.

In the remaining case cited by the OAE, Scotto, the attorney resigned from the California bar after he entered a plea of nolo contendere to an information charging him with possession of a forged instrument, a $6,000 check, in violation of California Penal Code §475. As part of the plea agreement, the attorney resigned from the California bar. The resignation provided that, in the event that the attorney should subsequently petition for reinstatement, the California bar could consider all disciplinary proceedings against him at the time of his resignation. The OAE requested that the attorney be indefinitely suspended in New Jersey, rather than disbarred, recognizing that, in California, attorneys who resign may apply for reinstatement and that a disbarred attorney in California may seek reinstatement after five years. The Board and the Court agreed to impose an indefinite suspension until the attorney's reinstatement in California. The Board's decision stated as follows:

> It is the OAE's contention that respondent's resignation in California is comparable to an indefinite suspension. In that state, an attorney who resigns from the bar may not petition for reinstatement within five years of the effective date of resignation. For good cause shown, this time may be shortened to fewer than five years, but not fewer than three years. Rule 960, California Rules of Court [ ]. By ordering that respondent be indefinitely suspended in New Jersey, the Court will be insuring that the suspension will not be lifted within three to five years, a period of suspension commensurate with the nature of respondent's criminal offense [felony charge of possession of a check in the amount of $6,000, knowing that the endorsement was forged].

New Jersey, thus, in essence imposed the same discipline as California: an indefinite suspension of no fewer than three years. That comported with the level of discipline

normally imposed in New Jersey for similar misconduct.

It is significant, however, that in Scotto there was a final adjudication of guilt by the California disciplinary authorities, based on the attorneys' criminal convictions. Here, respondent resigned from the New York bar before the filing of a formal ethics complaint; only a grievance had been filed as of that time. Accordingly, there has never been a disciplinary adjudication of misconduct. Moreover, the conduct that forms the basis for the New York grievance — failure to pay spousal support and to surrender for incarceration ordered as a result of that failure — would not call for a seven-year suspension in New Jersey. In fact, at least under the facts of this case, where respondent was not acting as an attorney, but as a party in the divorce action, where respondent reasonably relied on the advice of his bankruptcy counsel and on their joint interpretation of the bankruptcy laws, and where New Jersey has a mechanism for dealing with an attorney's failure to comply with an order for support (R.1:20-11A - suspension from practice of law for failure to support dependents), a period of suspension is not required. In refraining from imposing a suspension in these circumstances, the disciplinary system will do no violence to its duty to protect the public members and to preserve their confidence in the legal profession. Although an attorney's failure to fulfill his or her obligation to support dependents cannot be tolerated, the courts — and, since the enaction of R.1:20-11A, the ethics authorities — are equipped with ample means to address this form of contempt, both from the standpoint of forcing compliance and from the standpoint of maintaining the integrity of the administration

of justice. Accordingly, it is unnecessary to impose a suspension in those situations, so long as they are unaccompanied by other actions that might constitute ethics breaches deserving of sanction. Under these circumstances, seven members of the Board determined to reprimand respondent. See, e.g., In re Hartmann, 142 N.J. 587 (1995)(reprimand for intentionally and repeatedly ignoring court orders to pay opposing counsel a fee, resulting in a warrant for his arrest, and for discourteous and abusive conduct toward a judge with intent to intimidate her); In re Yengo, 92 N.J. 9 (1983) (reprimand following conviction for contempt based on persistent abuse of judicial process and lack of respect for the administration of justice; strong mitigating factors considered). But see In the Matter of Reiss, Docket No. DRB 80-191) (dismissal of ethics charges against attorney guilty of civil contempt in New York for failure to comply with his child support obligations, resulting in his incarceration); In the Matter of Olivia Smith, Docket No. DRB 97-461 (dismissal of disciplinary charges stemming from contempt ruling during criminal trial; Disciplinary Review Board found that contempt of court is not per se unethical; underlying acts must be evaluated to determine whether they rise to the level of unethical conduct).

In declining to suspend respondent, the Board also took into consideration that his conduct occurred two and one-half years ago, that he has been a member of the New Jersey bar for thirty-two years with an unblemished record and that he has continued to work as an attorney in New Jersey since his resignation in New York, without any apparent diminution of the public's confidence in his ability and rectitude.

Two members would have dismissed the charges. Those members are of the view that not all contempt rulings require a finding that the conduct that formed the basis for the contempt citation is also unethical. The dissenting members were convinced that, in this case, because respondent yielded to advice of his bankruptcy counsel not to surrender to the court pursuant to a warrant for his arrest, it cannot be found that respondent's conduct was unethical. Those members also believe that, even if respondent had not acted on the advice of counsel, his failure to surrender to the Court would not have resulted in discipline in New Jersey.

The Board did not consider the issue of whether respondent acted improperly with regard to the handling of his mother's and his uncle's estates. That issue was not properly before the Board. The OAE may choose to investigate such conduct and, if appropriate, file separate charges.

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

Dated: 6/8/98

By: _____
Lee M. Hymerling
Chair
Disciplinary Review Board