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SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 99-284

IN THE MATTER OF	:
STEVEN M. OLITSKY	:
AN ATTORNEY AT LAW	:

Decision

Argued: February 3, 2000

Decided: April 12, 2000

Richard M. Cignarella appeared on behalf of the District VB Ethics Committee.

Ronald C. Hunt appeared on behalf of respondent.

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

This matter was before us based on a recommendation for discipline filed by the District VB Ethics Committee ("DEC"). The formal complaint charged respondent with violations of *RPC* 1.3 (lack of diligence), *RPC* 1.4(a) (failure to communicate with client), *RPC* 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation), *R.* 1:20-20 (b)(5) (after suspension from practice of law, using stationery containing the word

"attorney") and *R.* 1:20-20 (b) (5) (failure to notify client of suspension) (count one); and *RPC* 1.3, *RPC* 1.4(a) and *RPC* 8.4(c) (count two).

Respondent was admitted to the New Jersey bar in 1976 and has a lengthy disciplinary history. In 1993, he received a private reprimand for failure to communicate with a client and failure to prepare a written fee agreement. In 1996, he was admonished for, again, failure to prepare a written fee agreement and failure to inform a client that he would not perform any legal work until his attorney fee was paid in full. Respondent was suspended for three months, effective May 16, 1997, for banking and recordkeeping violations, failure to safeguard property and conduct involving dishonesty, fraud, deceit or misrepresentation, including commingling personal and client funds in his trust account to avoid an Internal Revenue Service levy on his personal funds. In June 1998, respondent was again suspended for three months, consecutive to his prior suspension, for misconduct in three matters, including gross neglect, lack of diligence, failure to explain a matter to the extent reasonably necessary to permit the client to make an informed decision about the representation, failure to communicate with a client and failure to provide clients with a written fee agreement. Finally, on April 8, 1999, respondent was suspended for an additional six months, retroactive to November 16, 1997, for gross neglect, pattern of neglect, failure to communicate with a client, failure to prepare a written fee agreement, continued representation of a client, following termination of representation, and failure to surrender client property on

termination of representation. The Court order conditioned respondent's reinstatement on the conclusion of all ethics matters then pending against him (as of October 15, 1997).

The Mitchell Matter

On October 1, 1996, Edythe Mitchell retained respondent to represent her in a bankruptcy matter. The next day, respondent sent a letter to Mitchell confirming his representation in the filing of a chapter thirteen bankruptcy petition and confirming his fee of $960 ($800 attorney fee plus $160 filing fee). On October 3, 1996, respondent notified Mitchell of his belief that a chapter seven bankruptcy petition would be more beneficial for her, adding that there would be an additional $15 filing fee for that petition. Mitchell paid respondent a total fee of $975, as follows: $400 on October 3, 1996, $300 on October 19, 1996 and $275 on November 2, 1996. Mitchell also provided respondent with a list of creditors, in accordance with his instructions. Despite full payment of the fee, respondent did not file a bankruptcy petition for Mitchell.

According to Mitchell, she tried to reach respondent by telephone several times over the next few months. Mitchell had no contact with respondent from November 2, 1996 (the date of the last fee payment) and April 1997, when she went to respondent's office to inquire about the bankruptcy petition. At that time, respondent informed Mitchell that to keep his fees low it was his practice to file bankruptcy petitions "in bulk" and that her petition would

be filed in due course. Mitchell had no contact with respondent after April 1997. Again, she tried to reach him by telephone and went to his law office, without success. Mitchell continued to receive calls from creditors, seeking overdue payments.

Mitchell contended that respondent never notified her in any fashion, whether by telephone or in writing, of his May 16, 1997 suspension from the practice of law. She maintained that she learned of respondent's suspension from a neighbor. Mitchell protested that, although she gave respondent's telephone numbers to creditors, they kept calling her, complaining that respondent never returned their telephone calls. She stated that, despite the fact that respondent had not filed a bankruptcy petition in her behalf, he never offered to return any of her fee, including the filing fee. Mitchell admitted that she had not asked respondent for a refund, explaining that he had failed to return her telephone calls and that she did not want to discuss financial matters with his secretary.

Mitchell conceded that she had not been sued by any of her creditors, adding that she had no bank accounts to be levied on and no wages to be executed.

The presenter offered into evidence an April 17, 1998 letter from respondent to him, written on respondent's letterhead and identifying respondent as an "attorney at law" (Exhibit PM4). Although the presenter stipulated that, at the time he received the letter, he was aware of respondent's suspension, he submitted the letter to support the charge that

respondent violated *R.* 1:20-20(b)(5) by using stationery indicating that he was an attorney in good standing.

For his part, respondent stated that Mitchell's grandson, a Mr. Gilbert, had accompanied Mitchell to his office in October 1996. Gilbert was a Newark police officer who had been referred to respondent by another Newark police officer. Although Mitchell had co-signed an automobile lease for Gilbert for a car that apparently had been repossessed, respondent was retained to represent Mitchell, not Gilbert. Respondent recalled that, because he believed Mitchell was a wage-earner, he initially recommended a chapter thirteen petition and then later advised her to file a chapter seven petition, when he learned that she was not employed. Mitchell gave respondent a list of debts totaling $77,710 and a list of creditors. According to respondent, there was no need to file the bankruptcy petition immediately because Mitchell had not yet received any dunning letters.

Respondent claimed that, from October 1996 through June 1997, he talked with Mitchell at least six times and with Gilbert about twelve times. He further contended that, in June or July 1997, he orally told both Mitchell and Gilbert of his suspension.

With respect to the April 17, 1998 letter sent to the presenter, respondent explained that the failure to cover the words "attorney at law" was an oversight on his part, adding that he had sent approximately twenty other letters to the presenter with those words crossed out.

As to the fee issue, respondent maintained that he accepted a full fee from Mitchell, even though he knew that he would not immediately be filing the bankruptcy petition, because he learned from experience that, inasmuch as some clients took a long time to pay, it was better not to file the petition until paid in full. He acknowledged that, although Mitchell had paid his fee in full by November 2, 1996, as of his suspension in May 1997 he still had not filed her bankruptcy petition. According to respondent, it was not his practice to prepare fee agreements in bankruptcy cases because he confirmed the fee arrangements in letters to clients and because the bankruptcy petition itself contained this information. Respondent stated that, because he did not ordinarily keep billing records in bankruptcy cases, he had no idea how much time he had spent on Mitchell's case. Although he claimed that he spent time on the telephone with Mitchell's creditors, he did not make any notes of those conversations or confirm those conversations in writing. Respondent stated that, because the cost of sending letters was prohibitive, he ordinarily contacted creditors by telephone.

Respondent explained that he usually filed about five chapter seven bankruptcy petitions simultaneously so that the creditors' meetings could be held on the same date. In this fashion, the amount of time spent on each case would be minimized. Notwithstanding that bankruptcy matters comprised about one-third of respondent's practice, he contended that he probably did not receive five chapter seven bankruptcy cases between November 2,

1996 and May 1997, when he was suspended. Respondent claimed that about eighty percent of his bankruptcy filings are chapter thirteen petitions.

Respondent admitted that, through an oversight, not all clients received notice in writing of his suspension. According to respondent, he kept bankruptcy files in separate filing cabinets, depending on whether the petition had been filed. Through inadvertence, he claimed, he sent suspension notices only to the clients whose petitions had been filed. Although respondent conceded that some clients did not receive notice of his suspension, he maintained that he notified Mitchell by telephone and that her grandson, Gilbert, and the Newark police officer who had referred them to his office were also notified by telephone. Respondent admitted that he had not notified Mitchell in writing. He speculated that, in June or July 1997, when he orally notified Mitchell of his suspension, he had earned about $200 to $250 of his fee in the *Mitchell* matter.

The King Matter

Donna King retained respondent in October 1986 to file a bankruptcy petition in her behalf. She paid respondent a $460 fee in two installments, the last of which was made on November 4, 1986. King had two major creditors: Sears and Citibank. According to King, after Citibank sought to execute her wages, she brought the execution documents to respondent and he resolved the matter. Thereafter, King had no further contact with respondent and assumed that he had filed the bankruptcy petition.

King obtained credit without incident during the next eleven years, until she applied for a mortgage in 1998. King then discovered that respondent had never filed the bankruptcy petition and that her credit history revealed debts still due to Sears and Citibank. As a result of her credit history, King has not been able to purchase a house.

King denied having received an October 1, 1987 letter and a November 12, 1987 letter from respondent, requesting that she schedule an appointment to review her file. Although she admitted that she had moved twice in the interim and had not provided respondent with her new address, she noted that she had notified the United States Postal Service of her change of address and that her mail should have been forwarded to her. King further denied receiving a copy of a February 5, 1987 letter from respondent, notifying a Special Civil Part constable that he had filed a bankruptcy petition in King's behalf and requesting that the constable delay the execution of her assets.

According to respondent, he informed King, when they first met, that she had to provide him with a list of creditors before he could file a bankruptcy petition in her behalf; King never gave him the necessary information. Respondent did not recall if he had met with King a second time, when she had brought the execution information to his office, or if she had given those documents to his secretary. Respondent testified that he sent King two letters, dated October 1, 1987 and November 12, 1987, requesting that she schedule an appointment. Respondent claimed that he never heard from King and, consequently, never

filed a bankruptcy petition in her behalf. Respondent conceded that, although King had paid his fee in full as of November 4, 1986, he did no work on her case until February 1987. Respondent admitted that he never asked King for the list of creditors and that he had no follow-up system, relying on clients to contact him. Respondent denied knowledge of any wage execution against King and asserted instead that the constable had issued a notice of an execution sale. Respondent speculated that, when his secretary received that notice, she prepared the February 5, 1987 letter for his signature. In that letter, respondent represented that he had filed a bankruptcy petition in King's behalf. Respondent speculated that, upon reviewing the file and ascertaining that no petition had been filed, he had destroyed the original letter, but that a copy had remained in the file. Respondent believed that the original had never been sent to the constable, contending that, if it had, it must have been through inadvertence. Respondent maintained that, even if the constable had received the letter, it would not have been misleading because, before staying the execution sale, the constable would have required a docket number or other proof that a petition had indeed been filed.

Respondent acknowledged that almost one year elapsed between his meeting with King and his attempt to contact her to schedule an appointment. Respondent never tried to refund her fee, noting that he would not have sent a reimbursement if there had been no response to his attempts to contact her. Respondent testified that it was not his practice to automatically refund fees to clients, but only at their request.

* * *

The DEC found that, in the *Mitchell* matter, respondent violated *RPC* 1.3, *RPC* 1.4(a) and *R.* 1:20-20(b)(10). The DEC recommended the dismissal of the *RPC* 8.4(c) violation. The DEC also recommended the dismissal of the *R.* 1:20-20(b)(5) violation, finding that respondent had sent numerous letters to the presenter during his period of suspension, and that his failure to cover the words "attorney-at-law" in one of these letters was an oversight.

In the *King* matter, the DEC recommended the dismissal of all charged violations, finding that respondent had tried to contact King, that King had changed her address and that the presenter had not conclusively proven that the letter to the constable had actually been sent.

The DEC recommended a three-month suspension.

* * *

Following a *de novo* review of the record, we are satisfied by clear and convincing evidence that respondent committed ethics violations. Indeed, during oral argument before us, respondent conceded his misconduct.

In the *Mitchell* matter, respondent received a $975 fee in November 1996 to file a bankruptcy petition. After Mitchell's attempts to reach respondent by telephone were unsuccessful, she went to respondent's office in April 1997 to ascertain the status of her matter. At that time, respondent informed her that the bankruptcy petition had not been filed. He told her that he was waiting until he had about five petitions so that they could be filed simultaneously in order to reduce costs to each client. As of the date of respondent's suspension from the practice of law, May 1997, he had not filed Mitchell's bankruptcy petition. His conduct in this regard violated *RPC* 1.3 (lack of diligence). Respondent also violated *RPC* 1.4(a) by failing to return Mitchell's telephone calls about the status of her bankruptcy matter. Lastly, respondent's failure to notify Mitchell of his suspension violated *R.* 1:20-20(b)(5).

The DEC correctly dismissed the charge that, during his suspension, respondent used stationery indicating that he was an attorney. The record supports the finding that respondent had sent numerous letters to the DEC investigator with the words "attorney-at-law" deleted and that respondent's use of the stationery was inadvertent. Moreover, the investigator stipulated that he had not been misled by the use of the stationery because he had been aware of respondent's suspension.

The DEC also correctly dismissed the charge that respondent violated *RPC* 8.4(c) in *Mitchell*. There is no evidence that, when respondent accepted Mitchell's fee, he knew that it would be in excess of the services that he intended to provide.

With respect to the *King* matter, respondent violated *RPC* 1.3 by failing to take any action in her behalf. King met with respondent on October 1, 1987 and paid his fee in full by November 4, 1986. Although respondent contended that King's failure to give him a list of creditors precluded the filing of a bankruptcy petition in her behalf, he admitted that he had not asked her for the list. Respondent further conceded that almost one year had elapsed between his meeting with King and his attempt to contact her to request that she schedule an appointment to review her file. Her changes of address, thus, were not the cause of respondent's lack of interest in her case. Respondent also acknowledged that, rather than having procedures to ensure follow-up, he relied on his clients' calls to him. Respondent's conduct in this regard constituted a violation of *RPC* 1.3. Similarly, respondent's failure to communicate with King for almost one year, or to even attempt to contact her, violated *RPC* 1.4(a).

The DEC correctly dismissed the two charged violations of *RPC* 8.4(c). Again, as in the *Mitchell* matter, there was no evidence that, at the time respondent accepted the fee from King, he had no intention of providing the legal services for which he had been paid.

Similarly, with respect to the representation to the special civil part constable that the bankruptcy petition was filed, there was no evidence that that letter had been sent.

In sum, in these two matters respondent displayed a lack of diligence and failed to communicate with his clients. He also failed to inform his client of his suspension in one of those matters. The level of discipline for such misconduct depends on, among other things, the number of client matters involved and the attorney's prior disciplinary history. *See, e.g., In re Mandle*, 157 *N.J.* 69 (1999) (reprimand for gross neglect, lack of diligence and failure to communicate; attorney had prior reprimand); *In re Gordon*, 139 *N.J.* 606 (1995) (reprimand for lack of diligence and failure to communicate in two matters, gross neglect and failure to return a file in one of those matters; attorney had a prior public reprimand); *In re Carmichael,* 139 *N.J.* 390 (1995) (reprimand for lack of diligence and failure to communicate in two matters; attorney had prior private reprimand); *In re Brantley* 139 *N.J.* 465 (1995) (three-month suspension for lack of diligence in two matters, failure to communicate in one of the matters, failure to cooperate with the DEC and pattern of neglect; attorney had prior one-year suspension and three private reprimands); *In re Martin* 122 *N.J.* 198 (1991) (three-month suspension for misconduct in four matters, including failure to pursue an appeal, failure to communicate with clients in three matters and failure to cooperate with the DEC investigation; attorney had prior six-month suspension).

Respondent's misconduct in these two matters was not egregious. Nonetheless, he has an extensive ethics history. The ethics violations for which respondent has been disciplined occurred between 1990 and 1995. The misconduct in the *Mitchell* matter took place from 1996 through 1997 and in the *King* matter from 1986 through 1987. Although respondent was not suspended until May 16, 1997, he should have been on notice that his conduct was questionable because, as of November 1996 (when Mitchell had paid his fee in full), three grievances and four formal complaints were pending against him. We, thus, unanimously determine to impose a six-month suspension, retroactive to the date of the expiration of his most recent period of suspension, November 16, 1998. Upon reinstatement, respondent must be supervised by a proctor indefinitely. Three members did not participate.

We further require respondent to reimburse the Disciplinary Oversight Committee for administrative costs.

Dated: 4/12/00

By: _____
LEE M. HYMERLING
Chair
Disciplinary Review Board

SUPREME COURT OF NEW JERSEY

DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Steven M. Olitsky
Docket No. 99-284

Argued: February 3, 2000

Decided: April 12, 2000

Disposition: Six-Month Suspension retroactive to November 16, 1998

Members	Disbar	Six-Month Suspension (retroactive)	Reprimand	Admonition	Dismiss	Disqualified	Did not Participate
Hymerling		x					
Boylan		x					
Brody		x					
Lolla							x
Maudsley							x
Peterson		x					
Schwartz							x
Wissinger		x					
Total:		5					3

Robyn M. Hill 4/25/00
Robyn M. Hill
Chief Counsel