SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket Nos. DRB 99-067 & 99-068

IN THE MATTERS OF

ROBERT ROVNER and
ROVNER, ALLEN, SEIKEN & ROVNER,

ATTORNEYS AT LAW

Decision

Argued: June 10, 1999

Decided: November 17, 1999

Mark S. Kancher appeared on behalf of the District IV Ethics Committee.

Robert N. Agre appeared on behalf of Robert Rovner.

Arnold H. Feldman appeared on behalf of Rovner, Allen, Seiken and Rovner.

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 IV Ethics Committee ("DEC").

Robert Rovner ("respondent") has been the managing partner of a Pennsylvania law firm, also a respondent herein, named Rovner, Allen, Seiken & Rovner ("the law firm"), since at least 1983. Although respondent has never been admitted to the bar in New Jersey, he consented to our jurisdiction in this matter because the law firm maintained a New Jersey practice since at least 1983. The handling of several of the law firm's New Jersey personal injury cases is at issue in this matter.

* * *

The alleged misconduct dates back to 1983. The disciplinary matters against respondent and the law firm were originally docketed by the DEC in September 1991. The original complaint alleged that respondent and his partners, Jeffrey Seiken, Bruce Allen and Susan Rovner, were attorneys licensed to practice law in Pennsylvania, but not admitted to practice in New Jersey and that, from 1985 through 1993, the law firm maintained a practice in New Jersey using newly admitted attorneys who were licensed to practice in both New Jersey and Pennsylvania. Those attorneys worked out of the law firm's Feasterville, Pennsylvania office, but utilized several New Jersey office addresses. During the time in question, the attorneys were, David R. Bane, Jeffrey Perlman, Janet G. Felgoise, Cole Silver and Carol Fletcher-Dennison.

According to the original complaint, the law firm did not maintain attorney trust and business accounts in New Jersey and did not keep in a New Jersey office records and other files regarding New Jersey cases. In addition, the complaint alleged that respondent and the law firm allowed two New Jersey personal injury actions to be dismissed at the expense of the client's claims. The alleged violations were as follows: RPC 1.1(a) (gross neglect), RPC 1.3 (lack of diligence), RPC 1.4(a) (failure to communicate with clients), RPC 3.5 (ex parte communication), RPC 4.2 (communication with person represented by counsel), RPC 5.1(b) (failure to supervise junior attorneys), RPC 7.5 (firm names and letterheads) and R. 1:21-1, RPC 5.5(a) (unauthorized practice of law) and R. 1:20-1(a)[cited in error as R. 1:20-1(B)].

The original hearing panel report found that respondent, Jeffrey Seiken, Bruce Allen and the law firm violated RPC 1.1(a), RPC 1.4(a), and RPC 5.1(a). It found no misconduct on the part of Susan Rovner or the only New Jersey attorney implicated, Cole Silver.

In a sweeping dismissal of other alleged violations, the DEC stated the following in the hearing panel report:

> At the hearing it was the recommendation of the Presenter that the following violations be dismissed: RPC 1.1(B), RPC 1.3, RPC 3.5, RPC 4.2, RPC 5.5(A), RPC 7.5 and R. 1:20-1(B) and 1:21-1. With respect to the dismissal of violation [sic] to R. 1:21-1, this dismissal was conditioned upon the agreement by the Respondents to put in place proper procedures for insuring a bona fide office for the practice of law was established in New Jersey. That agreement included the Respondents' intention to have an individual in an office in New Jersey prepared to answer the telephones as well as maintaining the files of all New Jersey cases in the New Jersey office. The panel was satisfied that as of the date of its findings [ ] Respondents had complied with its agreement to take certain steps to comply with R. 1:21-1.

> The Panel further finds after review of all evidence, the dismissal of the above-referenced RPC violations and Rule violations is appropriate in that clear and convincing evidence did not exist on which to base findings of those Rules.

In May 1996 we remanded the matters to the Office of Attorney Ethics ("OAE") for further investigation and prosecution. In a detailed remand letter, we expressed our concerns about the DEC's findings:

> The Board has determined to remand the matter to the Office of Attorney Ethics for further investigation and prosecution.
> [emphasis added].

> The Board had a number of concerns in this case. None of the five New Jersey attorneys referenced within the District Ethics Committee (DEC) record as 'used' by the Rovner law firm between April 1985 and September 1993 (the time period covered by this complaint) were charged with any violations in this matter despite the firm's clear failure to maintain New Jersey trust and business accounts, and by reference an apparent failure to comply with the recordkeeping requirements of R. 1:21-6 and RPC 1.15. In addition, the record indicates that at least several of the New Jersey attorneys were directly involved in, if not responsible for, the personal injury cases that formed the basis of the complaint. Three of these attorneys, Jeffrey Perlman, Janet Felgoise and Cole Silver may have been involved in at least one if not both of the personal injury matters filed by the grievants. The record also indicates that Joseph Lokamski has been the firm's 'managing New Jersey attorney' since 1991.
>
> In addition to the above issues, respondent Rovner may have made several misrepresentations to the New Jersey client, LaBate, regarding both the state of the law in New Jersey as well as costs sustained in a personal injury action which was dismissed because of the firm's neglect. The record also indicates that Rovner advised LaBate that he did not need an attorney and could settle directly with Rovner regarding the firm's malpractice. Neither RPC 8.4(c) nor RPC 1.7 were addressed by the DEC.
>
> While the DEC found violations of RPC 1.1(a) and RPC 1.4(a) as well as RPC 5.1, the DEC apparently did not find a violation of RPC 5.5(a) by either

respondent Rovner or Seiken. In addition, RPC 7.5, particularly section b of that rule, was not fully addressed. The Board was further concerned that certain pertinent information, such as the number of New Jersey cases involved during the time that the Rovner firm did not maintain the appropriate accounts, the exact involvement of New Jersey counsel vs. Pennsylvania counsel in New Jersey actions, as well as the funds generated as a result of the firm's New Jersey activities, may be relevant.

The Board has determined, as previously indicated, to remand this matter to [the OAE] for further proceedings. Specifically, a further investigation should be conducted in the areas noted above. In addition, the appropriate rule violations should be charged both as to the law firm and the individuals involved.

Following the remand, on June 13, 1997 the OAE issued an investigative report concluding that respondent Robert Rovner and the law firm had violated RPC 1.1(a), RPC 1.3, RPC 1.4(a) and RPC 5.1. Citing the age of these cases and respondent Rovner's representations during the investigation in behalf of the law firm, the OAE recommended the dismissal of the charges related to recordkeeping violations and the alleged failure to maintain a bona fide New Jersey office. In addition, because of the lack of documentation, the OAE recommended the dismissal of the alleged violation of RPC 7.5(b). The investigative report did not address our concerns in the following areas:

1. The apparent misconduct of attorneys Felgoise and Perlman, who were directly involved in the handling of the personal injury actions.
2. Robert Rovner's alleged misrepresentations to the client in one of the matters and his alleged attempt to settle a subsequent malpractice action directly with the client, who was represented by counsel.
3. The number of cases handled by the New Jersey office during the years in question.
4. The extent of revenues generated by the New Jersey practice during the years in question.

Finally, the OAE investigative report concluded that Cole Silver had misrepresented to the client the status of one of the personal injury actions, in violation of RPC 8.4(c).

Based on its investigation, the OAE prepared nearly identical complaints against respondent and the law firm, which were signed by the DEC apparently in February 1999. However, the complaints do not allege any misconduct by Silver, despite the OAE's contrary conclusion in its report.[1]

On August 4, 1998 the DEC conducted a proceeding on the issues raised on remand. No testimony was taken. Rather, by way of a joint stipulation of facts, respondent and the law firm admitted violations of certain RPCs. The DEC also incorporated by reference the facts contained in its prior hearing report. In addition, the stipulation mentioned facts, that, contrary to the investigative report, completely exonerate Silver of any misconduct. Contrary to our direction, the DEC's efforts were limited to resolving these matters by way of stipulation, instead of a hearing to flesh out the issues. It may be that there were valid reasons for the DEC's action, such as the unavailability of witnesses to testify. However, nowhere in the new panel report is there a reference to any such reasons. Surprisingly, the report suggests that our instructions on remand were unclear.

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[1]Notwithstanding the Board's direction, in its remand letter that the OAE take charge of the investigation and prosecution of these matters, the OAE simply transferred responsibility for the matters to the DEC after drafting the complaint.

The net result of the above procedural history is that no new light has been shed on these matters since our remand three years ago, with the exception of the addition of the joint stipulation.

* * *

The Trottnow Matter

The first count of the complaints against respondent and the law firm alleged violations of RPC 1.1(a) (gross neglect), RPC 1.3 (lack of diligence), RPC 1.4(a) (failure to communicate) and RPC 5.1(b) (failure to supervise junior attorneys) in a personal injury action.

In or about April 1983 the Trottnows retained the law firm to represent them in a dram shop action against the Menagerie Bar and Peter Bellace, the owner and operator of the bar. Mr. Trottnow had sustained multiple fractures when the vehicle of an intoxicated patron of the Menagerie bar collided head-on with the Trottnow vehicle. Trottnow required extensive medical treatment, including skeletal traction and several surgeries. A preliminary investigation showed that the driver of the other automobile had a BAC of .22.

On April 2, 1985 Jeffrey L. Perlman, Esq., the law firm's only New Jersey attorney at the time and a new member of the bar, filed a complaint in Trottnow's behalf in Camden County. On five separate occasions the Camden County Sheriff's Office tried

unsuccessfully to serve the complaint on the defendants. Thereafter, neither respondent nor the law firm attempted service by alternate methods. In August 1985 Perlman left the law firm. On October 23, 1986 the complaint was dismissed for lack of prosecution.

In October 1987 the law firm assigned the Trottnow case to Janet G. Felgoise, Esq., also a new member of the New Jersey bar. From then until February 1988 Felgoise attempted to restore the complaint, but was unsuccessful. In her motion to reinstate the complaint, she asserted that the law firm had not received the court's notice to dismiss, due to an office move and the inadvertent misfiling of the order of dismissal. As a result, she claimed, she and the law firm were unaware that the matter had been dismissed.

The court denied Felgoise's motion. The Appellate Division affirmed the decision shortly afterward. In its opinion, the Appellate Division stated that

> [p]laintiff's brief before Judge Lowengrub relied on R. 4:50-1 and sought relief on grounds of 'inadvertence and excusable neglect.' He found none and in the circumstance, we can not say that he abused his discretion. The neglect of this file by the plaintiff's attorney was neither inadvertent nor excusable in the circumstance. It was blatant and totally unprofessional.

Felgoise left the law firm in April 1988.

As a result of the mishandling of their matters, the Trottnows lost their claims. Apparently, they were later made whole by the law firm. Both respondent and the law firm admitted all of the allegations contained in the complaints related to Trottnow: violations of RPC 1.1(a), RPC 1.3, RPC 1.4(a) and RPC 5.1(b).

The LaBate Matter

The second count of the complaint against respondent and the law firm alleged violations of RPC 1.1(a) (gross neglect), RPC 1.3 (lack of diligence), RPC 1.4(a) (failure to communicate with the client) and RPC 5.1(b) (failure to supervise junior attorney).

In or about February 1986 Guy and Barbara LaBate retained the law firm to represent them in a personal injury action. Apparently, a snow plow on the Garden State Parkway dropped snow from an overpass as the LaBates drove under it. As a result, Mr. LaBate lost control of the vehicle and crashed into an embankment. He, his wife and child sustained injuries.

On February 3, 1988 Felgoise filed a complaint naming the New Jersey Highway Authority Garden State Parkway as the sole defendant, despite a New Jersey State Police incident report indicating that South Toms River Township was responsible for plowing the road in question. In addition to naming the wrong defendant, Felgoise failed to file a notice of the LaBates' claim, required by the New Jersey Tort Claims Act ("the Act").

On January 25, 1989 the complaint was dismissed for the plaintiffs' failure to provide notice under the Act. The law firm failed to notify the LaBates that the complaint had been dismissed. As a result, the LaBates lost their claim. They later filed a successful malpractice action against the law firm.

Both respondent and the law firm admitted all of the allegations of the complaints, that is, violations of RPC 1.1(a), RPC 1.3, RPC 1.4(a) and RPC 5.1(b).

* * *

The DEC accepted the joint stipulation and concluded that respondent, individually, as well as the law firm violated the following RPCs in both Trottnow and LaBate: RPC 1.1(a), RPC 1.3, RPC 1.4(a) and RPC 5.1(b). Although the DEC did not explicitly find a failure to maintain a bona fide office, its report stated as follows:

> Apparently, the Rovner firm with Robert Rovner being the named New Jersey Partner in the Firm, was given the appearance the [sic] maintaining an office in New Jersey for the practice of law when, in fact, it maintained no such bona fide office. The Rovner firm utilized newly admitted New Jersey attorneys to provide a cover for the maintaining of its New Jersey office when, in fact, those attorneys were either inexperienced, unsupervised, did not have any real contact with the files of the New Jersey cases, or a combination of the foregoing.

In recommending a reprimand, the DEC noted that the firm had been in compliance with the bona fide office requirements of RPC 5.5(a) since 1990. That finding is also supported by the OAE investigation.

Finally, the DEC dismissed the charges against respondent and Silver for lack of clear and convincing evidence of a violation of RPC 8.4(c).

* * *

Upon a de novo review of the record, the Board was satisfied that the DEC's conclusion that respondents were guilty of unethical conduct is supported by clear and

convincing evidence. The misconduct in these cases took place over sixteen years ago in the Trottnow matter and fifteen years ago in the LaBate matter. It is difficult to adequately address all of the issues raised throughout the history of these cases after so much time has elapsed. Respondent and the law firm, however, stipulated to violations of RPC 1.1(a), RPC 1.3, RPC 1.4(a) and RPC 5.1(a) in both matters.

Respondent admitted that he was the partner in charge of the general practice of the law firm during the representation of Trottnow and LaBate. Respondent accepted responsibility for the mishandling of those matters, which included gross neglect, lack of diligence and failure to communicate with the clients. He also admitted failing to directly supervise the junior attorneys assigned to the matters. On the other hand, respondent flatly denied misrepresenting the status of the LaBate matter, as alleged in the original complaint. This charge was not part of the stipulation or, for that matter, of the subsequent complaint filed after our remand. Accordingly, we make no finding of unethical conduct in this regard.

Similarly, there is no new evidence in the record to substantiate a violation of RPC 8.4(c) by Silver. Therefore, we dismiss this charge as well.

There remains the issue of the law firm's New Jersey office during the years 1985-1993. Clearly, the DEC originally believed that the law firm had failed to maintain a bona fide office during that time. The report stated that the dismissal "was conditioned upon the agreement by the Respondents to put in place proper procedures for insuring that a bona fide office for the practice of law was established in New Jersey." The OAE, however,

determined that it could not produce clear and convincing evidence of violations of the bona fide office rule, due to the passage of time. In addition, the record contains several recent denials from the law firm that it violated the rule. Therefore, we declined to find a violation of RPC 5.5(a).

With regard to the numerous other violations that were dismissed, the passage of time has already hampered the gathering of clear and convincing evidence. We recognize that, to remand these matters one more time would almost certainly prove fruitless. Our review was, thus, limited to the record before us.

Cases involving failure to supervise junior attorneys, coupled with a combination of other violations such as gross neglect, lack of diligence and failure to communicate, will ordinarily result in a reprimand. In re Daniel, 146 N.J. 491(1996) (reprimand imposed for lack of diligence, failure to communicate with the client and failure to supervise junior attorney.); and In re Libretti, 134 N.J. 123 (1993) (public reprimand imposed where the attorney exhibited gross neglect, lack of diligence, failure to expedite litigation, failure to communicate with the client, failure to withdraw from the representation and failure to supervise junior attorney.) See also In re Fusco, 142 N.J. 636 (1995) (reprimand imposed where the attorney's failure to supervise a junior attorney resulted in the knowing misappropriation, by the junior attorney, of $262,000 from respondent's trust and business accounts.)

In certain circumstances, the passage of time may be considered when meting out discipline. In re Kotok, 108 N.J. 314, 330 (1987). Over sixteen years have elapsed since the original misconduct occurred in these matters. It is too late to resolve unanswered questions about the actions of these respondents so many years ago. The combination of misconduct might, under other circumstances, merit harsher discipline for respondent and a fine against the law firm. Nevertheless, respondent has had no other brushes with the ethics authorities since these cases arose and the law firm's New Jersey office has been in compliance with the rules for the past nine years. Under these circumstances, we unanimously determined to impose a reprimand on respondent and the law firm.

We further require that respondent and the law firm be held jointly and severally liable for the reimbursement to the Disciplinary Oversight Committee for all administrative costs incurred in connection with these matters.

Dated: 11/17/99

LEE M. HYMERLING
Chair
Disciplinary Review Board

SUPREME COURT OF NEW JERSEY

DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Robert Rovner
Docket Nos. DRB 99-067

Argued: June 10, 1999

Decided: November 17, 1999

Disposition: Reprimand

Members	Disbar	Suspension	Reprimand	Admonition	Dismiss	Disqualified	Did not Participate
Hymerling			x				
Cole			x				
Boylan			x				
Brody			x				
Lolla			x				
Maudsley			x				
Peterson			x				
Schwartz			x				
Wissinger			x				
Total:			9				

* Member Thompson is on a temporary leave of absence

By Isabel Frank 12/7/99
Robyn M. Hill
Chief Counsel

SUPREME COURT OF NEW JERSEY

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