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SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 07-281
District Docket No. XIV-06-616E

IN THE MATTER OF
SAUL A. BERKMAN
AN ATTORNEY AT LAW

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Decision

Argued: January 17, 2008

Decided: March 19, 2008

Richard 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 came before us on a motion for reciprocal discipline filed by the Office of Attorney Ethics (OAE), based on respondent's nine-month suspension in New York for violating New York disciplinary rules corresponding to New Jersey RPC 1.1(a) (gross neglect), RPC 1.3 (lack of diligence), and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation). The OAE urged a three- to six-month

suspension. We voted to impose a prospective three-month suspension.

Respondent was admitted to the New Jersey bar in 1974, having previously been admitted to the New York bar in 1968. He has no prior New Jersey discipline. However, on April 25, 2002, he received a letter of admonition in New York for "neglect of a matrimonial matter, delay and client deception as to the status of the case." The letter is not a part of this record.

A five-charge (count) petition (complaint) alleged that respondent grossly neglected a New York personal injury action.

On June 8, 2006, the Appellate Division of the Supreme Court of New York, First Department, entered an order suspending respondent from the practice of law for nine months, effective July 10, 2006. The facts that gave rise to that matter are as follows.

In October 1989, Marilyn Hill retained respondent to represent her in connection with a slip-and-fall injury that she sustained at a New York CUNY facility. Respondent filed a complaint on Hill's behalf, on March 28, 1991, but neglected to serve the New York Attorney General within the prescribed time. Therefore, in May 1991, the State of New York obtained a dismissal of the complaint.

Between May 1991 and June 1995, respondent repeatedly told his client that the matter was proceeding apace and would soon go to court. In June 1995, before a New York State Court of Claims, respondent conceded that he had failed to timely serve the Attorney General. The court announced its intention to dismiss the claim, with costs against Hill. Without first consulting with his client, and in order to avoid an assessment of costs against her, respondent withdrew her claim.

Hill testified that, in the fall of 1996, a year after respondent withdrew her claim, he misrepresented to her that the case was progressing and would go forward soon.

In January 1997, long after the dismissal, respondent wrote to Hill asking her to consent to withdraw the claim as speculative and remote in its prospects for recovery. Although Hill never received the letter, respondent acknowledged having prepared it and sent it to her.

In 1999, Hill contacted another attorney, to whom respondent turned over portions of the Hill file. Among the documents turned over were those relating to respondent's 1995 withdrawal of Hill's claim and his January 1997 letter to Hill, requesting her consent to the withdrawal. Only then, in 1999, did Hill learn the truth about her case.

Respondent did not advise the OAE of his New York discipline, as required by R. 1:20-14(a)(1).

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 findings of misconduct shall establish conclusively the facts on which it rests for purposes of a discipline proceeding in this State. We, therefore, adopt the findings of the New York Supreme Court, Appellate Division.

Reciprocal disciplinary proceedings in New Jersey are governed by R. 1:20-14(a)(4), which provides that

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 matter was so lacking in notice or

opportunity to be heard as to constitute a deprivation of due process; or

(E) the unethical conduct 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). However, with regard to section (E), the New Jersey discipline for such misconduct would differ substantially from that imposed in New York.

Respondent grossly neglected his client's personal injury action, lacked diligence in handling it, and made misrepresentations to the client about its status, violations of RPC 1.1(a), RPC 1.3, and RPC 8.4(c).

In New Jersey, "intentionally misrepresenting the status of lawsuits warrants public reprimand." In re Kasdan, 115 N.J. 472, 488 (1989). At times, the presence of other forms of unethical conduct, if non-serious, may still lead to the imposition of a reprimand. See, e.g., In re Wiewiorka, 179 N.J. 225 (2004) (attorney took no action on the client's behalf, did not inform the client about the status of the matter and the expiration of the statute of limitations, and misled the client that a complaint had been filed); In re Onorevole, 170 N.J. 64 (2001) (attorney grossly neglected a matter, failed to act with diligence, failed to reasonably communicate with the client, and

made misrepresentations to the client about the status of the case); In re Till, 167 N.J. 276 (2001) (attorney engaged in gross neglect and misrepresentation, lying to the client over a nine-month period about the status of the case); and In re Riva, 157 N.J. 34 (1999) (attorney grossly neglected a matter, thereby causing a default judgment to be entered against the clients, failed to take steps to have the default vacated, and misrepresented the status of the case to the clients).

The two six-month suspension cases cited by the OAE in support of its recommendation for a three- to six-month suspension address more egregious misconduct and aggravating factors not present here. In In re Weiner, 183 N.J. 262 (2005), the attorney received a six-month suspension for violating RPC 1.1(a), RPC 1.1(b), RPC 1.3, RPC 1.4(a) and (b), RPC 1.5(a), RPC 1.16(d), RPC 8.4(c), as well as RPC 8.1(b) and RPC 8.4(d). The latter two violations arose out of the attorney's failure to file a R. 1:20-20 affidavit following his suspension from the practice of law. Unlike this case, Weiner proceeded to us as a default, for which enhanced discipline is required. In re Nemshick, 180 N.J. 304 (2004). In addition, attorney Weiner had a significant disciplinary history, including a prior private reprimand, a reprimand, and a six-month suspension.

In the other case In re Friedmann, 181 N.J. 320 (2004), the attorney received a six-month suspension for gross neglect, lack of diligence, lying to a Superior Court judge on several occasions, failing to inform a court of relevant facts in an ex parte proceeding, making false statements to third parties, engaging in conduct involving misrepresentations, engaging in conduct prejudicial to the administration of justice, failing to communicate with the client, and failing to protect a client's interests and return the client's file upon termination of the representation. Friedmann grossly mismanaged a medical malpractice action, failing to properly name some potential defendants. He then made numerous, serious misrepresentations to a judge in a successful effort to obtain a \$300,000 default judgment against one of the defendants, although he knew it was procedurally deficient for his own failure to serve that defendant. Thereafter, Friedmann carried out an extensive cover-up of his ill-gotten judgment.

Unlike the within matter, Friedmann involved numerous acts of dishonesty. The Supreme Court considered, as an aggravating factor, that Friedmann had wasted substantial judicial resources in his bogus quest, including a court's time in preparing for and conducting both a proof hearing and, after the deficiencies

in the judgment came to light, a hearing on the defendant's motion to vacate the judgment.

An attorney received a three-month suspension in In re Casey, 172 N.J. 6 (2001), for misconduct in four matters, including gross neglect, failure to expedite litigation by not pursuing his clients' claims, failure to communicate the status of the matters to his clients, making misrepresentations to the clients about the progress of their cases, and displaying a pattern of neglect.

Unlike Weiner and Friedmann, who violated numerous RPCs, this respondent violated but three: RPC 1.1(a), RPC 1.3, and RPC 8.4(c). Unlike Friedmann, respondent did not lie to a court or weave a complicated web of deceit in order to create a favorable result for himself or his client. Instead, respondent told the New York court the truth, when questioned about service upon the Attorney General – he had failed to timely serve that defendant. In addition, unlike Weiner, who had an extensive disciplinary history, this respondent has no prior New Jersey discipline and only an admonition in New York (2002). Even the three-month case (Casey) dealt with far more prevalent conduct (four matters) than the single client-matter involved in this instance.

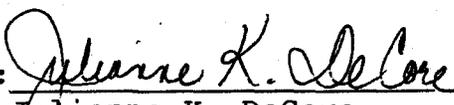
We are, thus, unable to agree with the OAE's recommendation for a six-month suspension.

On the other hand, we were very disturbed by respondent's pattern of misrepresentations to his client about the status of her case (from 1991 to 1999), his failure to consult with her about the withdrawal, and his prior New York admonition. In light of these findings, we determine that a three-month (prospective) suspension is the appropriate result in this case.

Chair O'Shaughnessy, and Members Lolla, Baugh, and Neuwirth 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
Louis Pashman Vice-Chair

By: 
Julianne K. DeCore
Chief Counsel

**SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD**

In the Matter of Saul A. Berkman
Docket No. DRB 07-281

Argued: January 17, 2008

Decided: March 19, 2008

Disposition: Three-month suspension

Members	Disbar	Three-month Suspension	Reprimand	Dismiss	Disqualified	Did not participate
O'Shaughnessy						X
Pashman		X				
Baugh						X
Boylan		X				
Frost		X				
Lolla						X
Neuwirth						X
Stanton		X				
Wissinger		X				
Total:		5				4


Julianne K. DeCore
Chief Counsel