SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 07-272
District Docket No. XIV-07-147E

IN THE MATTER OF

ROBERT S. FISHER

AN ATTORNEY AT LAW

Decision

Argued: January 17, 2008

Decided: April 8, 2008

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

Robert N. Agre appeared on behalf of respondent.

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) pursuant to R. 1:20-14, following respondent's disbarment by the Supreme Court of Pennsylvania. Respondent was disbarred as a result of

his gross neglect, lack of diligence, failure to communicate with the client, failure to turn over client files upon termination of the representation, and misrepresentation to the client about the status of the case (among other violations) in twelve personal injury matters involving eighteen clients. Respondent also failed to cooperate with the Pennsylvania disciplinary authorities, including not participating in the Pennsylvania disciplinary proceeding that was instituted against him as a result of his conduct in these client matters.

The OAE seeks respondent's disbarment. Respondent, in turn, submitted evidence of substantial mitigation and requests "a period of suspension . . . conditioned upon his demonstration of his ability to practice law in the State of New Jersey." For the reasons expressed below, we determine to impose a two-year suspension, retroactive to September 19, 2006, the date of respondent's disbarment in Pennsylvania.

Respondent was admitted to the New Jersey and Pennsylvania bars in 1988. At the relevant times, he maintained an office for the practice of law in either Harrisburg or Philadelphia, Pennsylvania. Respondent did not maintain an office in New Jersey.

On July 9, 2004, in a default matter, respondent was suspended for three months in New Jersey for lack of diligence,

failure to communicate with the client, conflict of interest, failure to maintain a bona fide office, and failure to cooperate with disciplinary authorities. In re Fisher, 180 N.J. 333 (2004). His conduct in that matter was similar to the conduct before us now.

On September 12, 2005, respondent was suspended for one year on a motion for reciprocal discipline (retroactive to July 29, 2004) for violations of RPC 8.4(b) (criminal act that reflects adversely on an attorney's honesty, trustworthiness, or fitness as a lawyer), RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation), and RPC 8.4(d) (conduct prejudicial to the administration of justice). In re Fisher, 185 N.J. 238 (2005). That matter stemmed from respondent's suspension in Pennsylvania for a year and a day, based on his criminal conviction of one count of insurance fraud, one count of forgery, and one count of criminal conspiracy – all third degree felonies. The criminal action uncovered respondent's fabrication of an invoice to substantiate an insurance claim for the laptop of his then girlfriend, now his wife.

The facts of this matter are taken from the Report and Recommendations of the Disciplinary Board of the Supreme Court of Pennsylvania (Report). Respondent's misconduct involved twelve personal injury matters, summarized below.

Anna Flores Collaso Matter

On July 25, 2000, Anna Flores Collaso was involved in an automobile accident. She retained respondent to represent her.

On November 4, 2003, Kemper Auto and Home Insurance Company (Kemper) sent respondent a release for Collaso's signature. Ten days later, respondent and Kemper verbally agreed to settle her claim for $8500. He did so without first explaining the matter to Collaso to the extent necessary to permit her to make an informed decision regarding her case.

On November 17, 2003, respondent wrote to Collaso and informed her that he had settled the case for $8500, from which attorney fees, expenses, and unpaid medical bills would be deducted; requested that she sign and return the enclosed release; stated that he would contact her when the funds became available; and invited her to contact him if she had any questions or concerns.

According to the Pennsylvania disciplinary authorities, "from time to time," Collaso attempted to contact respondent about the release, but he failed to respond to her "reasonable requests for information about the Release." Moreover, it appears that, on February 24, 2004, Kemper informed the Pennsylvania disciplinary authorities that it had not received the signed release from respondent.

On March 4, 2004, the Office of Disciplinary Counsel of the Disciplinary Board of the Supreme Court of Pennsylvania (ODC) wrote to respondent, informed him that Kemper was waiting for the signed release, and suggested that he communicate with his client about the matter. Respondent failed to take any further action on the case.

Ultimately, Collaso terminated respondent's representation and requested the transfer of her file to her new attorney. He refused to comply with her request.

Tony Anderson Matter

On June 20, 2000, Tony Anderson, who was involved in an automobile accident, retained respondent to represent him. Respondent gave Anderson an incomplete contingent fee agreement.

On June 19, 2002, respondent filed a complaint on behalf of Anderson. Two months later, the court granted the defendants' motion to compel discovery. On October 22, 2002, the court granted the defendants' motion for sanctions against respondent.

On November 5, 2002, respondent wrote to Anderson and confirmed that he had scheduled an appointment with him for November 8, 2002, at noon. Respondent failed to keep his appointment. In addition, from time to time, Anderson called respondent about the status of his case, but respondent neither

returned the calls nor complied with Anderson's reasonable requests for information.

On February 13, 2003, the court placed Anderson's case in deferred status, pending the defendants' bankruptcy, but respondent never apprised him of this development.

On March 5, 2004, the ODC wrote to respondent, suggesting that he communicate with Anderson about the status of his case. Respondent failed to communicate with Anderson.

Sonia A. and Sonia P. Godfrey Matter

Following an automobile accident, Sonia A. and Sonia P. Godfrey retained respondent to represent them. On May 15, 2003, respondent wrote to Sonia P. and enclosed an application for benefits to be completed by her and Sonia A.

Respondent scheduled an appointment with the Godfreys for January 21, 2004. They appeared for the appointment, but had to wait for respondent for four hours before respondent's assistant told them that he was not in the office. Respondent never showed up for the appointment.

After the ill-fated appointment, respondent failed to return the Godfreys' repeated telephone calls and to reply to their reasonable requests for information about their case. Moreover, on March 22, 2004, the ODC wrote to respondent,

suggesting that he contact the Godfreys and inform them of the status of their case. Respondent failed to take any action in this matter.

Barbara Thomas Matter

On June 20, 2001, Barbara Thomas was in a motor vehicle accident and retained respondent to represent her. On May 15, 2003, respondent sent Thomas an application for benefits for her to complete and return to him.

On January 12, 2004, respondent informed Thomas that defense counsel had scheduled her deposition for January 21, 2004, at 2 p.m. On that date, Thomas went to respondent's office for her deposition, but he was not there. She waited for him for more than three hours before respondent's assistant finally told her that he was not in the office. Respondent never showed up.

Respondent failed to appear for Thomas's deposition, failed to return her numerous telephone calls, and failed to reply to her reasonable requests for information about her case. On March 22, 2004, the ODC wrote to respondent, suggesting that he contact his client and inform her of the status of her case. Respondent failed to take any action in this matter.

Terrell Babb and Michael Marshall Matter

On March 9, 2002, Terrell Babb and Michael Marshall were involved in an automobile accident. They retained respondent to represent them. Respondent never returned their phone calls or replied to their requests for information about their cases; failed to perform any work on their behalf; misrepresented to the clients that he was working on their cases; failed to contact the defendant about his clients' claims; failed to place the PIP carrier on notice of their claims; and failed to provide the insurance carrier with actual notice of the claim.

By letter dated February 3, 2004, Marshall and his new lawyer, Howard Taylor, informed respondent that Marshall was dissatisfied with respondent's representation and his lack of communication; that Marshall was now represented by Taylor; that he wanted respondent to perform no further work on the matter; and that he wanted respondent to forward his file to Taylor. Notwithstanding respondent's receipt of the letter and Marshall's termination of his representation, respondent did not deliver Marshall's file to Taylor.

On February 25, 2004, Taylor wrote to respondent on behalf of Babb and advised him that Babb wanted Taylor to represent him; that Babb was concerned that respondent had done nothing in the case; that the statute of limitations was approaching; that

he had been unsuccessful in his attempts to contact respondent; and that Taylor "did not have sufficient information to protect Mr. Babb's case from that statute of limitations." Notwithstanding his receipt of Taylor's letter, respondent did not reply to it.

On February 27, 2004, Taylor filed a complaint on behalf of Babb, in the Court of Common Pleas of Philadelphia County. He did the same for Marshall on March 3, 2004. Respondent knew that Taylor had filed these complaints. Nevertheless, without legal authority, on March 9, 2004, respondent filed a writ of summons in the same court for an arbitration on behalf of both Marshall and Babb.

Walter and Billie Williams Matter

On April 29, 2002, Walter and Billie Williams were involved in an automobile accident. They retained respondent to represent them. From time to time, the Williamses called respondent, but he did not return their calls and comply with their reasonable requests for information. He also failed to do any work on the Williamses matter, all the while representing to them that he was working on their case.

On January 20, 2004, attorney Howard Taylor and Billie Williams signed a letter to respondent, which stated that the

Williamses were dissatisfied with respondent's handling of their cases and his lack of communication. They informed respondent that they had retained Taylor to represent them and requested respondent to forward their file to Taylor. Although respondent received the letter, he did not forward the file to Taylor.

On January 28, 2004, Taylor wrote to respondent again, informing him that he had not received a reply to his earlier letter, reporting that the Williamses were concerned about the status of their case, requesting that respondent contact him immediately upon receipt of the letter and let him know when he would receive the file, and stating that, if respondent did not get in touch with him within one week, he would contact the Philadelphia Bar Association. Respondent received the letter but failed to take any action or reply to the letter.

Taylors and Marshall Matter

On July 22, 2001, Laura, Kimberly, and Ashley Taylor and Michael Marshall were involved in an automobile accident. They hired respondent to represent them in their claim for damages. Thereafter, respondent failed to return their telephone calls and to reply to their reasonable requests for information.

In addition, respondent informed his clients that the driver of the vehicle responsible for the accident did not have

insurance when, in fact, he was insured at the time of the accident, and misled them into believing that he was working on their case, when he was doing nothing. In fact, respondent permitted the statute of limitations to expire, without having taken any steps to preserve his clients' claims.

On January 22, 2004, attorney Howard Taylor wrote a letter to respondent, which he and Laura Taylor had signed. The letter stated that the Taylors and Marshall were dissatisfied with respondent's handling of their cases and his lack of communication and that Kimberly and Ashley Taylor and Marshall would likely retain Taylor to represent them. The letter requested the return of Laura Taylor's file, and instructed respondent to do no further work on the case. Although respondent received Taylor's letter, he did not reply to it, and did not turn over Laura Taylor's file to Taylor.

Taylor wrote to respondent again, on January 28, 2004. The letter informed respondent that Taylor had not received a reply to the earlier letter, reported that Laura Taylor was concerned about the status of her case, requested that respondent contact him immediately upon receipt of the letter and let him know when he would receive the file, and stated that, if respondent did not contact him within one week, he would contact the

Philadelphia Bar Association. Although respondent received the letter, he ignored Taylor's requests.

On February 3, 2004, Howard Taylor and Marshall signed a letter to respondent, stating that Marshall was dissatisfied with respondent's handling of his case and his lack of communication, informed him that Marshall had retained Taylor to represent him, requested respondent to forward Marshall's file to Taylor's office, and instructed respondent to do no further work in the matter. Respondent received the letter, but failed to either reply to it directly or to turn over Marshall's file to Taylor.

On March 17, 2004, Howard Taylor wrote to respondent again. He requested a copy of the police report, asked whether respondent had taken any steps to protect the claims against the statute of limitations, and requested respondent to call him if he had any questions. Respondent received the letter, but ignored it. He did not forward either the Taylors' or Marshall's file to Taylor.

Respondent ignored the final letter from Howard Taylor, which was written on March 22, 2004. In this letter, Taylor stated that he had obtained a copy of the police report, that the statute of limitation had expired seven months earlier, and that it appeared that respondent had taken no action to protect

the interests of the Taylors and Marshall. The letter requested respondent to provide proof that he had filed a lawsuit or, alternatively, to forward Taylor's letter to his malpractice insurance carrier with a request that the carrier contact Taylor directly.

Vivian Cheeves Matter

On August 4, 2000, Vivian Cheeves slipped and fell at a Shop-Rite supermarket. On August 2, 2002, respondent filed a praecipe to issue writ of summons against Shop-Rite and Wakefern Food Corporation.

On August 20, 2002, respondent sent a letter to Cheeves in which he enclosed a copy of the praecipe, informed her that the defendants had not contacted him about settling the case, and advised her that the matter had been scheduled for an arbitration hearing on April 1, 2003. On October 7, 2002, respondent filed a complaint against Shop-Rite and Wakefern.

On March 26, 2003, respondent wrote to Cheeves and reminded her that the arbitration was scheduled for April 1, 2003. He requested that she schedule an appointment with him to prepare for the hearing. The disciplinary petition does not state whether Cheeves made or tried to make the appointment.

On April 2, 2003, respondent attended the arbitration on behalf of Cheeves. The panel ruled against Shop-Rite and awarded her $10,000. The panel found in favor of Wakefern, however. On April 7, Shop-Rite filed an appeal from the arbitration award.

On April 10, 2003, respondent wrote to Cheeves, enclosed a copy of the arbitration award, informed her that Shop-Rite had appealed the decision and that a status conference was scheduled for May 12, 2003, and explained that a trial would be scheduled in approximately six-to-nine months. During the discovery period, respondent did not diligently comply with Shop-Rite's and Wakefern's discovery requests. Therefore, on June 13, 2003, the court granted the defendants' motion to compel discovery. Respondent received a copy of the court order.

Respondent apparently continued to disregard his discovery obligations because, on August 1, 2003, the court granted the defendants' motion for sanctions and to compel the plaintiff's deposition. Respondent received a copy of the August 1, 2003 order, but apparently continued to do nothing because, on September 4, 2003, the court granted another motion for sanctions filed by the defendants and entered an order of non pros against Cheeves.

Respondent received a copy of the September 4, 2003 order, but failed to inform Cheeves that her complaint had been dismissed. As with the client matters discussed previously, Cheeves called respondent from time to time to request information about her case, but respondent did not return her calls or provide the requested information to her.

Delores R. Jones Matter

On February 8, 2002, Delores R. Jones was involved in an automobile accident. Two days later, she retained respondent. Thereafter, respondent failed to act with reasonable diligence and promptness in representing her.

Nearly two years later, on January 4, 2004, Jones called respondent to discuss her case. For whatever reason, she was not able to talk to him. Respondent did not return Jones's call and did not comply with her reasonable requests for information regarding her case.

Jones continued to make calls to respondent at his office and on his cell phone, but he neither took nor returned her calls. He also failed to reply to her reasonable requests for information about her case.

In March 2004, Jones went to respondent's office to get her file, but his "agents" would not give it to her. Jones then

wrote a letter to respondent, stating that she had tried to contact him by phone and in person since January 2004, and that she had received no response from him or anyone at his office. She informed him that she no longer wanted him to represent her and requested that he release her file so that she could seek other representation. Respondent received the letter, but did not release the file.

On May 4, 2004, Jones spoke to respondent about the return of her file. He requested that she give him two weeks to settle her case. On May 17, 2004, Jones called respondent's office and was advised that "she would receive her file when Respondent's agent located it."

Paul R. Verwey Matter

On June 24, 2000, Paul R. Verwey was involved in an accident. Shortly thereafter, he retained respondent to represent him. During the month of December 2001, Verwey repeatedly contacted respondent. Respondent told Verwey that there was no need to file a complaint until the two-year statute of limitation was close to expiration.

On June 24, 2002, Verwey called respondent to ask about the status of his case. Respondent told Verwey that he should have contacted him several days earlier. Later that day, respondent

filed a complaint on Verwey's behalf, informed Verwey of that fact, and represented to him that the case had been filed prior to the expiration of the statute of limitation.

In August 2002, respondent agreed to represent Verwey in several traffic violation matters, as a professional courtesy and, therefore, without charge. In October of that year, respondent did not appear for a hearing on the matters, which were then continued to November 2002. In November 2002, respondent again failed to appear. When Verwey refused to proceed without him, Verwey was found guilty. His license was suspended. Verwey continued to call respondent about his failure to appear at the hearings, but respondent did not answer his requests for information.

In April 2003, respondent met with Verwey and agreed to assist him in having his license reinstated. He informed Verwey that he would file a petition to re-open the traffic court matters. In July 2003, respondent misrepresented to Verwey that the petition had been filed. Respondent did not return Verwey's numerous messages inquiring about the status of the petition.

By letter dated October 2, 2003, Verwey complained to respondent that he had repeatedly contacted respondent's office and that respondent had failed to reply to his requests for information. Verwey expressed concern about respondent's

"passive approach" to his cases, and requested a prompt response to his letter. Although respondent received the letter, he did not reply to it.

On October 3, 2003, the court granted the defendants' motion for sanctions in the civil action that respondent had filed on Verwey's behalf, in June 2002. On December 1, 2003, the court granted the defendants' motion for non pros. Although respondent received a copy of the order, he did not inform Verwey of its entry.

On December 4, 2003, Verwey sent respondent a letter informing him that Verwey had been unsuccessful in his attempts to contact him within the past two weeks and that he was filing a complaint with the Disciplinary Board of the Supreme Court of Pennsylvania. Verwey stated that, if respondent did not reply to his letter within ten days, he would look for a new lawyer. He advised respondent that, if his rights were prejudiced by respondent's conduct in the civil action, he might seek damages against respondent. He inquired about the status of the civil action and about respondent's intentions with respect to his representation of the traffic matters. He also requested a copy of all motions, orders, decisions, and sanctions pertaining to the civil action, as well as the fee agreement between them.

After receiving the letter, respondent talked to Verwey, on December 15, 2003. However, respondent did not inform Verwey that the civil action had been non pros'd. On the day of their conversation, Verwey wrote to respondent and confirmed that, during their conversation, respondent had been advised of Verwey's difficulty in contacting him, had agreed to comply with Verwey's requests of copies of documents in the civil action and the fee agreement, and had agreed to enter his appearance in traffic violation matters in to Pennsylvania counties. Respondent received the letter.

On April 21, 2004, the court entered a judgment of non pros in the civil action. Although respondent received notice of the judgment, he did not inform Verwey of it.

Deon J. Moses Matter

On January 8, 2002, Deon J. Moses was involved in an automobile accident. That same month, he retained respondent to represent him. Respondent agreed to represent Moses on a contingent fee basis.

Over the next two years, Moses made repeated attempts to contact respondent. However, respondent failed to return Moses's calls.

On January 7, 2004, respondent filed a civil action on Moses's behalf. In May of that year, as a result of "health issues," respondent requested that another lawyer take over his outstanding cases.

Tara Gordon Matter

On September 15, 1999, Tara Gordon retained respondent to represent her in connection with a car accident. Respondent instituted suit on her behalf in a New Jersey court.

In the course of representation, Gordon made repeated attempts to contact respondent about her case, but he did not reply to her requests for information.

Although respondent received notice of a February 9, 2004 trial date, he did not inform Gordon either that a trial had been scheduled or that she was required to appear. Previously, on January 6, 2004, Gordon terminated respondent's representation. Respondent, however, "failed to take reasonably practicable steps to protect his client's interests" and failed to withdraw his appearance in the civil action.

On February 9, 2004, the trial judge wrote to Gordon, with a copy to respondent, and informed Gordon that she had been unable to get in touch with respondent after repeated attempts, indicated her concern that respondent had not informed Gordon of

the trial date, and advised Gordon that the trial had been continued to February 23, 2004.

On February 18, 2004, Gordon's new attorney, Michael Hanamirian, wrote to respondent and advised him that he was now representing Gordon. He requested that respondent forward Gordon's file to him. Although respondent received the letter, he did not comply with Hanamirian's request.

On March 4, 2004, Hanamirian wrote to respondent again, attached a copy of his February 18 letter, and requested that respondent forward Gordon's file to him within seven days. Respondent received the letter, but took no action.

When Pennsylvania instituted a disciplinary proceeding against respondent, he received the petition for discipline and proper notice of both the pre-hearing conference and the hearing. He failed to answer the petition and to appear at the pre-hearing conference and at the hearing.

Based on the allegations in these twelve matters, the Pennsylvania Disciplinary Board found that respondent had violated the following Pennsylvania RPCs: 1.3 (lack of diligence), 1.4(a) (failure to keep the client informed about the status of the matter and to respond to reasonable requests for information), 1.4(b) (failure to explain a matter to the extent necessary to permit the client to make an informed

decision regarding the representation), 1.16(a)(3) (after commencement of representation, failure to withdraw upon discharge by the client), 1.16(d) (upon termination of representation, failure to take steps to the extent reasonably practicable to protect the client's interests and to surrender papers and property to which the client is entitled), 3.2 (failure to expedite litigation), 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation), 8.4(d) (conduct prejudicial to the administration of justice), 8.5(b)(1) (application of New Jersey RPCs for conduct committed in the jurisdiction where a tribunal sits), and, by reason of Pennsylvania RPC 8.5(b)(1), the following comparable New Jersey RPCs: 1.1(a) (gross neglect), 1.4(a), 1.4(b), 1.16(a)(2), 1.16(a)(3), and 8.4(d). The Disciplinary Board did not identify which rules were violated in each matter.

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 finding of misconduct shall establish conclusively the facts on which it rests for purposes of a disciplinary proceeding in this state. We, therefore, adopt the findings of the Disciplinary Board. Thus, "[t]he sole issue to be determined . . . shall be the extent of final discipline to be imposed." R. 1:20-14(b)(3).

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

> 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 on which the discipline in another jurisdiction was predicated that it clearly appears that:
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> (A) the disciplinary or disability order of the foreign jurisdiction was not entered;
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> (B) the disciplinary or disability order of the foreign jurisdiction does not apply to the respondent;
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> (C) the disciplinary or disability 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 unethical conduct established warrants substantially different discipline.

Subsection (E) applies in this matter because the unethical conduct in this matter warrants substantially different discipline. Instead of disbarment, we determine to impose a two-year suspension, retroactive to September 19, 2006, the date of respondent's disbarment in Pennsylvania.

Here, the Pennsylvania Disciplinary Board did not state which rules respondent violated in each matter. Nevertheless, the conclusively-established facts demonstrate that he

effectively abandoned all of his clients by consistently failing to take and return telephone calls, consistently failing to respond to their requests for information about their cases, and by consistently failing to communicate to the clients his receipt of motions and orders in their matters. Moreover, respondent repeatedly wrote letters to his clients confirming appointments and court appearances and then failed to appear.[1] With respect to at least nine of the clients whom respondent had abandoned,[2] he then ignored the requests of either the clients or their attorneys to turn over their files.

In addition to these failings, respondent grossly neglected and lacked diligence in at least three matters involving six

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[1] Tony Anderson (missed appointment), Sonia A. and Sonia P. Godfrey (appointment – clients waited four hours before being told that respondent was not in the office), Thomas (deposition – client waited for more than three hours before being told that respondent was not in the office), Verwey (respondent failed to appear for two hearings, resulting in guilty findings and suspension of driver's license), and Gordon (respondent failed to inform client of trial date, resulting in her non-appearance).

[2] Anna Flores Collaso, Terrell Babb, Michael Marshall, Walter Williams, Billie Williams, Laura Taylor, Michael Marshall, Delores Jones, and Tara Gordon.

clients.[3] He also misrepresented the status of the case to the client in four matters involving nine clients.[4]

Finally, respondent failed to answer the petition for discipline filed against him in Pennsylvania and failed to attend the pre-hearing conference and the disciplinary hearing.

In choosing to disbar respondent, the Pennsylvania Disciplinary Board noted that he had engaged in "pervasive client neglect," to the point where some clients lost their claims. The misconduct spanned four years.

The Pennsylvania Board further considered respondent's disciplinary record, which consisted of the year-and-a-day suspension for insurance fraud, forgery, and criminal

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[3] Laura Taylor, Kimberly Taylor, Ashley Taylor, and Michael Marshall (respondent failed to take any action before the statute of limitations expired), Vivian Cheeves (complaint dismissed as a result of respondent's failure to provide discovery), and Verwey (complaint dismissed and judgment in favor of defendants granted as a result of respondent's failure to provide discovery).

[4] Terrell Babb and Michael Marshall (respondent misrepresented that he was working on case when he was not), Walter and Billie Williams (respondent failed to do any work for clients but "respondent misled" them to believe the contrary), Laura Taylor, Kimberly Taylor, Ashley Taylor, and Michael Marshall (respondent "misled" them that he was working on their case when, in fact, he was doing nothing), and Verwey (respondent misrepresented that he had filed a petition to re-open the traffic ticket matters).

conspiracy, and the three-month suspension imposed by this state for his lack of diligence, failure to communicate with the client, conflict of interest, failure to maintain a bona fide office, and failure to cooperate with disciplinary authorities.

Finally, in aggravation, the Pennsylvania Board considered respondent's "failure to participate whatsoever in the disciplinary process." Based on this, the Board "inferred from his actions that he ha[d] no interest in preserving his license to practice law." Accordingly, he was disbarred in Pennsylvania.

Here, respondent committed multiple infractions in twelve matters involving eighteen clients, over a four-year period. He was engaged in an ethics violations spree, effectively holding his clients' interests hostage by his inaction, his refusal to reply to their requests for information, and his failure to turn over their files. All the while, he did little-to-nothing on their cases and misrepresented the status of the matters to them. In short, while respondent may not have physically abandoned his practice, he certainly abandoned his clients' interests.

Further, respondent failed to reply to the Pennsylvania disciplinary authorities in those client matters where he was contacted by them and expressly asked to reply to either the

client's or the client's new attorney's requests. He further ignored the authorities when a petition was filed against him and when he failed to appear at the pre-hearing conference and at the hearing itself. As noted by the Pennsylvania Disciplinary Board, "[i]t may be inferred from his actions that he has no interest in preserving his license to practice law."

Finally, respondent has an ethics history that includes a three-month suspension and a one-year suspension in a matter involving criminal conduct (fraud, forgery, and conspiracy).

Respondent submitted to us evidence that he had not submitted to Pennsylvania. This evidence paints a wholly different picture of respondent and places his misconduct and inaction in Pennsylvania in an entirely different context.

Respondent has presented evidence of substantial mitigation, which, while it does not excuse his misconduct, explains his non-responsiveness to both his clients and the Pennsylvania disciplinary authorities.

Specifically, the misconduct in respondent's handling of the client matters took place between 2002 and 2004. During this time, according to medical records submitted by respondent, he suffered from extremely serious physical conditions, which adversely affected his mental state. The contents of a December 12, 2007 letter from Richard M. Sobel, M.D., a diplomate of the

American Board of Psychiatry and Neurology, summarizes respondent's medical condition from September 2001 through December 2007. The body of the letter reads as follows:

> Mr. Fisher has been under my care since September 2001 for chronic pain management for failed back syndrome, chronic scoliosis, arachnoiditis, and necrotizing fasciitis. I have also treated him for Major Depression, Recurrent, and residual Attention Deficit Syndrome.
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> Over the time period from November 2002 through November 2003, his back pain worsened, which caused a secondary worsening of his depression. In November 2003, he was diagnosed with necrotizing fasciitis, which further worsened his pain and depression. This resulted in several operations, including multiple skin grafts, with a secondary complication of being hospitalized for a MRSA infection in September 2005.
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> It is my opinion that his combination of physical and mental problems, along with medications for pain, prevented him from being able to fully function cognitively and emotionally during this time period. It is my opinion that this decrease in function caused him to not respond to a notice of disciplinary action in a timely fashion in April 2005.

In an affidavit, respondent asserted that, between the years 2003 and 2007, he underwent "approximately two dozen surgeries" related to necrotizing fasciitis (flesh-eating disease). Respondent suffered from open, oozing wounds on both legs from his feet to his hips from November 2004 to late 2006. At the same time, he suffered from severe back pain, which

required the use of opiates. His condition was exacerbated by a MRSA infection. All of these maladies caused him to suffer severe depression.

Respondent stated, in his affidavit, that he had tried to continue to run his practice by calling into the office and talking to his secretary and other attorneys who shared space with him. Nevertheless, respondent admits, his matters "did not get the attention they deserved." He stated, "I was just unable to keep up."

Respondent also stated that, when he realized that he would not be returning to his practice in the immediate future, he turned over his business to another attorney, Gerald Pomerantz. According to respondent, Pomerantz was able to "remedy" all of his client matters.

Moreover, respondent offered facts that he believes support a defense in each client's case, which he would have offered if he had been well enough to participate in the Pennsylvania disciplinary proceedings.

We cannot consider respondent's claimed defense in each of the individual client matters. R. 1:20-14(a)(5) states that "a final adjudication in another . . . tribunal . . . shall establish conclusively the facts on which it rests for purposes of a disciplinary proceeding in this state." Thus, "[t]he sole

issue to be determined . . . shall be the extent of final discipline to be imposed." R. 1:20-14(b)(3). Nevertheless, there is no reason why we cannot consider respondent's health problems as a mitigating factor.

Admittedly, these medical issues do not excuse respondent's misconduct, but they tend to explain it. Although the proffer of the medical evidence at this point is not subject to cross-examination, the OAE has not objected to our consideration of such evidence. Moreover, the medical records and the medical report possess a level of reliability that mere assertions do not.

We recognize that R. 1:20-14 does not expressly provide for the introduction of evidence in mitigation. We note, however, that the rule pertaining to motions for final discipline (MFD) does provide for the offer of mitigation. R. 1:20-13(c)(2). In MFD matters, the rule permits us and the Court to "consider any relevant evidence in mitigation that is not inconsistent with the essential elements of the criminal matter for which the attorney was convicted or has admitted guilt as determined by the statute defining the criminal matter." Because the MRD rule does not prohibit the consideration of evidence in mitigation and we see no other reason why such evidence should not be accepted in a MRD matter, we determined to consider it.

Attorneys who mishandle multiple client matters generally receive suspensions of either six months or one year. See, e.g., In re LaVergne, 168 N.J. 410 (2001) (six-month suspension for attorney who mishandled eight client matters; the attorney lacked diligence in six of them, failed to communicate with his clients in five, grossly neglected four, and failed to turn over the file upon termination of the representation in three; in addition, in one of the matters, the attorney failed to notify medical providers that the cases had been settled and failed to pay their bills; in one other matter, the attorney misrepresented the status of the case to the client; the attorney also was guilty of a pattern of neglect and recordkeeping violations); In re Lester, 148 N.J. 86 (1997) (six-month suspension for attorney who displayed a lack of diligence, gross neglect, and a pattern of neglect, failed to communicate in six matters, failed to cooperate with the investigation of the grievances, and allowed the disciplinary matter to proceed as a default; in one of the matters, the attorney misrepresented, in a letter to his adversary, that the adversary's secretary had consented to extend the time to file the answer; the attorney had received a reprimand in 1990 and another reprimand in 1996); In re Bosies, 138 N.J. 169 (1994) (six-month suspension imposed on attorney who, in various

combinations of four matters, engaged in gross neglect and a pattern of neglect, lacked diligence, failed to communicate with the client, and engaged in conduct prejudicial to the administration of justice; the attorney also engaged in dishonesty in one matter by undertaking an elaborate scheme to avoid deposing a witness – he presented to his client a fabricated subpoena and a motion to enforce, which he claimed did not result in an order, he scheduled the deposition to take place at the witness's office, met the client at a diner in advance, drove to the office with her only to find that the witness was not there, then took the client to the court house to report the witness to the judge and, when the client had returned from the bathroom, told her that the judge would not speak to him because the conversation would be ex parte); In re Brown, 167 N.J. 611 (2001) (in a default matter, one-year suspension for attorney who, as an associate in a law firm, mishandled twenty to thirty files by failing to conduct discovery, to file pleadings, motions and legal briefs, and to generally prepare for trials; the attorney also misrepresented the status of cases to his supervisors and misrepresented his whereabouts, when questioned by his supervisors, to conceal the status of matters entrusted to him; the attorney had been reprimanded before); In re Marum, 157 N.J. 625 (1999) (attorney

suspended for one year for serious misconduct in eleven matters, including lack of diligence, gross neglect, failure to communicate with clients, failure to explain the matter to clients in detail to allow them to make informed decisions about the representation, misrepresentation to clients and to his law partners, which included entering a fictitious trial date on the firm's trial diary, and pattern of neglect; the attorney also lied to three clients that their matters had been settled and paid the "settlements" with his own funds; the attorney's misconduct spanned a period of eleven years; in aggravation, the attorney had two prior admonitions, failed to recognize his mistakes, and blamed clients and courts therefor); In re Lawnick, 162 N.J. 113 (1999) (in a default matter, one-year suspension for attorney who agreed to represent clients in six matters and took no action, despite having accepted retainers in five of them; the attorney also failed to communicate with the clients and to cooperate with the investigation of the ethics grievances); and In re Herron, 140 N.J. 229 (1995) (one-year suspension for attorney who engaged in unethical conduct in seven matters; the attorney either grossly neglected them or failed to act with diligence, failed to keep the clients informed of the progress of their matters and, in two cases, misrepresented their status to the clients; the attorney also

failed to cooperate with disciplinary authorities by failing to reply to inquiries during the ethics investigation).

In all but one of the cases just cited (Brown, supra, 167 N.J. 611), the attorneys mishandled between four and eleven matters. Here, respondent mishandled twelve matters involving eighteen clients. In Brown, supra, the attorney mishandled between twenty and thirty cases, defaulted in the disciplinary proceeding brought against him, and received a one-year suspension. The record in that case did not reveal the harm, if any, that befell any of the firm's clients. In the Matter of Thomas M. Brown, DRB 00-067 (October 18, 2000) (slip op. at 6). Here, however, the record demonstrates that some of respondent's clients suffered actual harm as a result of his misdeeds. For example, in the Taylors and Marshall matter, respondent allowed the statute of limitations to expire, without having taken any steps to preserve his clients' claims. In the Cheeves matter, his inaction resulted in an order of non pros against his client.

Moreover, unlike Brown, whose ethics history was limited to a reprimand for lack of diligence, failure to communicate, and misrepresentation, respondent's ethics history includes a three-month suspension and a one-year suspension. The latter resulted

from conduct constituting a criminal act, as well as fraud, and conduct prejudicial to the administration of justice.

Respondent's medical and psychological conditions, his abandonment of his clients' interests in so many matters, the resulting prejudice to some of them, the misrepresentations to others, and respondent's disciplinary history all merit a two-year suspension, retroactive to September 19, 2006, the date of respondent's disbarment in Pennsylvania. We further determine that respondent may not seek reinstatement in New Jersey until he has been reinstated in Pennsylvania. Finally, prior to reinstatement in New Jersey, respondent shall submit proof of his fitness to practice law, as attested to by a mental health professional approved by the OAE.

Chair O'Shaughnessy and members Baugh, Lolla, 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
Julianne K. DeCore
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Robert S. Fisher
Docket No. DRB 07-272

Argued: January 17, 2008

Decided: April 8, 2008

Disposition: Two-year suspension

Members	Disbar	Two-year 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
Julianne K. DeCore
Chief Counsel