

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 08-184
District Docket No. XIV-08-038E

IN THE MATTER OF :
ANDREW J. BREKUS :
AN ATTORNEY AT LAW :
:

Decision

Argued: September 18, 2008
Decided: December 9, 2008

Nitza Blasini appeared on behalf of the Office of Attorney Ethics.

Respondent did not appear for oral argument, despite proper notice.

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"), following respondent's one-year and one-day suspension in Pennsylvania for violating several of the Pennsylvania Rules of Disciplinary Enforcement and rules comparable to New Jersey RPC 1.1(a) (gross neglect), RPC 1.3 (lack of diligence), RPC 1.4(b) (failure to keep a client reasonably informed about the status of a matter or to comply with reasonable requests for

information), RPC 1.4(c) (failure to explain a matter to the extent reasonably necessary to permit the client to make informed decisions about the representation), RPC 1.5 (b) (failure to provide client with a writing setting forth the basis or rate of the fee), RPC 1.15(a) (safeguarding client's property), RPC 1.16(a)(1) (failure to withdraw if the representation will result in violation of the Rules of Professional Conduct or other law), RPC 1.16(d) (failure to protect a client's interests upon termination of the representation); RPC 5.5(a)(unauthorized practice of law); RPC 7.1(a)(1) (making false or misleading communications about the lawyer's services), RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation), and RPC 8.4(d) (conduct prejudicial to the administration of justice).

The OAE recommends a one-year suspension, retroactive to January 4, 2008, the effective date of respondent's suspension in Pennsylvania. The OAE also recommends that respondent's reinstatement in New Jersey be conditioned on his reinstatement in Pennsylvania. We agree with the OAE's recommendations.

Respondent was admitted to the New Jersey and Pennsylvania bars in 1986. Prior to these incidents, he had no disciplinary record in Pennsylvania. In New Jersey, however, he received an admonition, in 2000, for failure to advise his client about a

potential malpractice claim against him and to advise her of the desirability of consulting with independent counsel prior to entering into an oral agreement with him for the settlement of the malpractice claim. The agreement contemplated the payment of \$8,000 plus reasonable medical expenses. In the letter of admonition, we directed respondent to pay forthwith a \$5,000 balance owed to the client under the settlement agreement and to provide proof of such payment to the OAE within seven days. In mitigation, we considered respondent's representation that he was "ready, willing and able" to make the payment to the client. In the Matter of Andrew J. Brekus, DRB 00-187 (September 25, 2000).

Shortly after the letter of admonition, respondent forwarded a \$5,000 check to the client, along with a release of all claims against him. The client, however, refused to sign the release because, in her view, respondent had unilaterally changed his agreement to pay for her medical expenses. Respondent did not notify the OAE of these events.

When respondent did not fully comply with our directive in the letter of admonition, new disciplinary charges were filed against him. Those charges led to his receipt of a reprimand, in 2006, for breaching our directive and for failing to cooperate

with the investigation of the grievance. In re Brekus, 186 N.J. 409 (2006).

We now turn to the conduct that resulted in the current disciplinary charges against respondent. The facts were culled from a Joint Petition in Support of Discipline on Consent between respondent and the Pennsylvania Office of Disciplinary Counsel.

I. ATTORNEY REGISTRATION CHARGES

On several occasions, including from September 15, 2003 to December 19, 2003, and from September 27, 2004 to September 15, 2006, respondent was ineligible to practice law in New Jersey for failure to pay the annual attorney assessment to the New Jersey Lawyers' Fund for Client Protection ("the Fund"). Yet, in his Pennsylvania Attorney's Annual Fee Form for 2003-2004, dated October 22, 2003, he falsely stated that he was an attorney in good standing in New Jersey. Similarly, in his Annual Fee Form for 2005-2006, filed on September 12, 2006, he falsely stated that he was licensed and on "active status" in New Jersey.

In Pennsylvania, too, respondent did not remain in good standing. On July 26, 2005, the Pennsylvania Supreme Court transferred him to inactive status, effective August 25, 2005, for his failure to comply with the continuing legal education

requirements of that jurisdiction. Respondent knew that he was about to be transferred to inactive status. On two occasions, he received a notice from the Pennsylvania Continuing Legal Education ("CLE") Board and was given time to take remedial action.

Also on July 26, 2005, respondent was advised of the entry of the Pennsylvania Supreme Court order and was directed to comply with the rules requiring him to notify his clients and others of his transfer to inactive status and to file a certification with the Pennsylvania Disciplinary Board. Respondent did not comply with that directive.

Thereafter, respondent made some attempts at being reinstated to active status, but his attempts fell short of the steps required of him. He then took additional CLE credits, which brought him up to date for the period ending on December 31, 2004. Later, he did not complete course requirements for the period ending on December 31, 2005 until May 2006, and did not pay the required late fees until September 2006.

II. THE PANTANO ESTATE MATTER

In June 2003, Ralf D'Amico retained respondent to represent him as executor of the estate of Margaret V. Pantano ("the decedent"), who had died on June 10, 2003. D'Amico

- a. advised Respondent that decedent was a domiciliary of New Jersey who resided in Delaware County, Pennsylvania, at the time of her death, and that her assets included a 50% interest in real property in Pennsylvania, valued at \$100,000, and personal and real property in New Jersey, valued at \$203,880.05;
- b. provided decedent's will, which, *inter alia*, devised her interest in the Pennsylvania property to her daughter Lisa Pantano Kane, bequeathed \$10,000.00 to each of two grandchildren, and devised decedent's residuary estate equally to Ms. Kane and decedent's daughter Maria Pantano Bucci; and
- c. advised that Ms. Kane had held decedent's power of attorney and engaged in certain questionable transactions involving decedent's assets.

[Ex.E¶19.]

Although respondent informed D'Amico that his fee would be \$10,000, he did not provide D'Amico with a writing setting forth the basis or rate of his fee. Respondent had not previously represented D'Amico.

On June 17, 2003, respondent filed with the Delaware County Register of Wills a petition for grant of letters testamentary to D'Amico. The petition was granted.

According to the Joint Petition in Support of Discipline, by filing the initial probate in Pennsylvania, rather than in New Jersey, respondent demonstrated a lack of competence. Later,

on July 24, 2003, he filed for probate in New Jersey, where the decedent had resided, but did not inform D'Amico that he could not continue to represent him in New Jersey during his period of ineligibility. As indicated previously, respondent was ineligible to practice in New Jersey from September 15, 2003 to December 19, 2003 (three months) and from September 27, 2004 to September 15, 2006 (two years).

D'Amico took the necessary action to garner the decedent's assets, obtain valuations of the real estate and sell it, and discharge liabilities of the estate. Between June 2003 and late 2005, D'Amico and respondent discussed with counsel for Kane her actions involving estate assets and her claims relating to the estate, including the disclaimer of her interest in the Pennsylvania property.

Between September 2003 and January 2005, pursuant to respondent's direction, D'Amico issued against the estate account three checks totaling \$10,568.00, representing respondent's fees and costs. Respondent negotiated each of those checks for cash. On September 10, 2003, at respondent's direction, D'Amico issued a \$4,500 check to the Pennsylvania Department of Revenue for the inheritance tax.

By letter dated November 4, 2003, respondent forwarded a \$2,000 fee check to James Edelman, CPA, advised him, among other

things, that the inheritance tax had been paid, and asked that Edelman prepare the Pennsylvania non-resident inheritance tax return, the New Jersey estate tax return, if necessary, and a Federal 706. However, it was not necessary to file a Federal 706 because the estate did not have sufficient assets. Also, it was not necessary to file a New Jersey return because the decedent's daughters were her beneficiaries. Thus, no tax was due.

By letter dated December 5, 2003, respondent forwarded to Edelman an appraisal of the Pennsylvania property and provided him with other information.

Respondent failed to timely file the decedent's final income tax return and to pay the income tax.

On January 18, 2005, settlement on the sale of the Pennsylvania property took place. The net proceeds, in the amount of \$85,230.47, were distributed to the estate. With that, the necessary transactions for the filing of tax returns and accountings were completed. By letter dated March 5, 2005, copied to D'Amico, respondent forwarded \$55,000 to the beneficiaries "on account of their bequests, advised [them] of the status of various matters, and requested information."

Respondent failed to provide Edelman with the HUD-1 form, which was necessary to complete the Pennsylvania inheritance tax

return, as well as information necessary to prepare the decedent's final year income tax return.

In or about May 2005, respondent provided D'Amico with an "Executor's Account of May 5, 2005", captioned in Atlantic County Surrogate's Court." D'Amico signed and returned the document, but respondent failed to file it.

On or about June 17, 2005, respondent filed D'Amico's renunciation of the trusteeship under the decedent's will, in the Surrogate's Court in New Jersey.

In July and August 2005, as directed by respondent, D'Amico made additional distributions to the beneficiaries and paid respondent an additional \$1,000 for his services in dealing with Kane.

As mentioned earlier, on July 26, 2005, the Pennsylvania Supreme Court entered an order transferring respondent to inactive status in Pennsylvania, effective August 25, 2005. Respondent did not advise D'Amico of the entry of that order and of his consequent inability to continue to represent him in Pennsylvania.

In August 2005, respondent advised D'Amico that he would send to Edelman the necessary documents for the preparation of the final tax returns. Respondent failed to do so, however.

Between August 2005 and March 2006, D'Amico called respondent on numerous occasions. Respondent failed to accept his calls and to reply to messages left on his voicemail. In January 2006, D'Amico called respondent to inquire about the progress of the matter, at which time respondent promised to get the documents out promptly. Thereafter, respondent failed to take any action to communicate with D'Amico.

By certified letter dated March 7, 2006, delivered to respondent's Pennsylvania office on that same date, D'Amico requested that respondent apprise him of the status of the estate and forward documentation to Edelman.

By certified letter dated March 28, 2006, D'Amico discharged respondent as his attorney and requested that respondent release his file to his new attorney, James M. Pierce. On June 15, 2006, Pierce forwarded to respondent's home address copies of D'Amico's March 7 and 28, 2006 letters. Respondent failed to reply to those letters and to release the file.

III. THE DANYI MATTER

In June 2005, at a time when respondent was ineligible in New Jersey (from September 27, 2004 to September 15, 2006),

Kevin Danyi, an attorney, retained respondent to defend him in a claim by Home Care Services, Inc. ("HCS"), a New Jersey corporation, and to bring a claim against Capitol Blue Cross ("Blue Cross"), a Pennsylvania corporation. Although respondent had a thirty-year social and professional relationship with Danyi, he had not represented him prior to June 2005. Respondent did not provide Danyi with a writing setting forth the basis or rate of his fee or even orally communicate the amount of his fee to Danyi.

According to the Joint Petition in Support of Discipline on Consent,

- a. From 2002 to 2005, Mr. Danyi suffered from a serious illness, for which he received medical treatment from various providers, including HCS, in the State of New Jersey.
- b. All of Mr. Danyi's medical bills were covered by Blue Cross, except for \$71,305.80 in medicine and services provided by HCS.
- c. From 2003 through 2005, Mr. Danyi filed administrative appeals with Blue Cross and exhausted the administrative process, without success.
- d. In spring 2005, HCS contacted Mr. Danyi and demanded payment in full.

[Ex.E156.]

Respondent did not disclose to Danyi that he was unable to represent him because of his ineligibility to practice law in

New Jersey. He also failed to inform Danyi of his inactive status in Pennsylvania. Nevertheless, on two occasions, respondent promised to file suit in New Jersey against Blue Cross and to defend Danyi in the HCS lawsuit.

Respondent requested that Danyi pay him \$500, which Danyi did. Respondent negotiated those checks for cash and did not hold the funds in escrow, pending performance of his services and payment of the costs for which the checks had been issued.

In June 2005, HCS sued Danyi in the Superior Court of New Jersey, Law Division, Middlesex County. In July 2005, Danyi was served with the summons and complaint. Danyi immediately notified respondent of his receipt of the summons and complaint and, at respondent's direction, faxed them to respondent.

Between June 2005 and January 2006, Danyi turned over to respondent all of his personal and medical records relating to the claims and told respondent that he employed paralegals who could assist respondent, if needed. Although respondent assured Danyi that he would take care of the matter, he failed to file an answer to the complaint.

In August or September 2005, respondent requested an extension of time to file an answer. Jeffrey Blumstein, HCS's counsel, granted respondent's request and asked him to forward a written stipulation for the extension. Respondent failed to do

so, despite Blumstein's telephone calls and letters, as well as respondent's promises to Danyi in that regard.

Eventually, by letter dated October 3, 2005, on letterhead identifying himself as a member of the Pennsylvania and New Jersey bars, respondent forwarded to Blumstein a stipulation extending the time to answer until October 16, 2005. According to the Joint Stipulation in Support of Discipline on Consent, the letterhead was misleading because, at that time, respondent was not permitted to practice in either jurisdiction.

Although Blumstein executed and returned the stipulation to respondent, respondent failed to file an answer. He advised Blumstein that he intended to file a declaratory judgment action against Blue Cross.

In October and November 2005, by letters and e-mails, Blumstein demanded that respondent either file an answer by December 1, 2005, or provide him with a copy of the declaratory judgment complaint. Respondent did neither.

From August through December 2005, Danyi frequently telephoned and sent emails to respondent, inquiring about the status of the case and offering his assistance in preparing the case. On most occasions, respondent did not reply to Danyi's calls and emails. When he did, he assured Danyi that he was

working on it," had matters "under control," and was researching various issues.

On December 5, 2005, HCS entered a default judgment against Danyi. By letter dated December 15, 2005, Blumstein notified Danyi of the default judgment against him. On January 3, 2006, Blumstein forwarded to Danyi a copy of a December 21, 2005 final judgment against him in the amount of \$71,305.80.

Danyi immediately contacted respondent for an explanation, at which time respondent

- a. replied that he would "take care of everything," that "default judgments in New Jersey are easy to open," that "we'll file against Blue Cross immediately," and that he would contact Mr. Blumstein immediately;
- b. called Mr. Danyi back and falsely advised him that he had spoken to Mr. Blumstein and obtained permission to "open the judgment"; and
- c. said that he would be in Bethlehem for Christmas and would stop by Mr. Danyi's office or house to talk to him about how they were going to proceed.

[Ex.E184].

Respondent did not stop by Danyi's house or file a petition to open the default judgment.

In January 2006, Danyi repeatedly telephoned respondent, who ultimately promised to meet with him on January 27, 2006. At that meeting,

- a. Respondent brought pleadings to open the judgment, to be filed with the court in New Jersey, which contained numerous misspellings and grammatical errors and which Respondent stated were prepared with voice-recognition software as a rough draft;
- b. Mr. Danyi reviewed the documents with Respondent, made corrections and modifications and signed several verifications;
- c. Respondent assured Mr. Danyi that he would make the corrections and file the final version immediately; and
- d. at Respondent's request, Mr. Danyi gave him a check for \$400.00 for additional fees.

[Ex.E187.]

Once again, respondent negotiated the check for cash and failed to hold the fees inviolate, pending delivery of his services.

After January 27, 2006, respondent failed to communicate with Danyi and to reply to his numerous telephone calls, emails, and letters. In late January and February 2006, however, respondent communicated with Blumstein, who requested that respondent provide him with a settlement proposal in connection with the judgment. Respondent neither informed Danyi about his communications with Blumstein nor replied to Blumstein's request.

From February to March 2006, respondent failed to reply to Danyi's numerous emails and voice mail messages left on his cell and office phones.

By letter dated March 30, 2006, Richard E. Santee, Jr., Esq., notified respondent that Danyi had retained him to file a legal malpractice claim against respondent. In May 2006, Santee filed suit in the Court of Common Pleas of Northampton County. Respondent did not appear for depositions and did not comply with discovery requests. In January 2007, he was held in contempt and ordered to pay \$1,200 in sanctions.

As noted above, respondent admitted violations of rules comparable to New Jersey RPC 1.1(a), RPC 1.3, RPC 1.4(b), RPC 1.4(c), RPC 1.5(b), RPC 1.15(a), RPC 1.16(a)(1), RPC 1.16(d), RPC 5.5(a), RPC 7.1(a)(1), RPC 8.4(c), and RPC 8.4(d), in addition to numerous Pennsylvania Rules of Disciplinary Enforcement ("Pa.R.D.E.").

The Pennsylvania Disciplinary Review Board considered, in mitigation, that respondent admitted his misconduct, cooperated with Pennsylvania disciplinary authorities, expressed his remorse and embarrassment by his misconduct, acknowledged his wrongdoing, had been suffering from severe depression before and during the time of his misconduct, sought treatment, in the form

of psychotherapy and prescribed medication, and had no disciplinary record in Pennsylvania.

On December 5, 2007, the Supreme Court of Pennsylvania accepted the September 13, 2007 recommendation of the three-member panel of the Disciplinary Review Board of the Supreme Court of Pennsylvania and ordered that respondent be suspended on consent for one year and one day.

As indicated previously, the OAE recommends a one-year suspension, retroactive to January 4, 2008, the effective date of respondent's suspension in Pennsylvania. In support of its recommendation, the OAE relied on the following cases that resulted in one-year suspensions: In re Spiess, 170 N.J. 65 (2001) (in a default matter, an attorney failed to file his clients' lawsuit for more than two years while falsely assuring him that he had; two prior three-month suspensions); In re Lesser, 140 N.J. 41 (1995) (attorney engaged in gross neglect and lack of diligence while representing a client in an appeal resulting in the appeal's dismissal, failed to communicate with the client, misrepresented the status of the matter for an extended period of time, and failed to cooperate with disciplinary authorities; prior private reprimand and three-month suspension); In re Kantor, 118 N.J. 434 (1990) (attorney grossly neglected a case by failing to file an appellate brief,

failed to act with diligence to secure its reinstatement, and misrepresented the status of the case to the client; prior private reprimand); and In re Grabler, 114 N.J. 1 (1989) (attorney grossly neglected four matters, failed to communicate with the clients and, in two cases, misrepresented the status of the matters to the clients).

Following a full 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 we rest for purposes of disciplinary proceedings. Therefore, we adopt the findings of the Supreme Court of Pennsylvania and find that respondent mishandled two client matters; failed to communicate with the clients; failed to timely return the D'Amico file; failed to safeguard funds given in payment of fees and costs; failed to withdraw from the representation of a client if the representation would result in violation of the Rules of Professional Conduct or other law; made misrepresentations to at least one client and on his Pennsylvania attorney registration statements; and practiced law while inactive in Pennsylvania and ineligible in New Jersey.

More specifically, in the Pantano and Danyi matters, respondent did not provide the clients with writings setting forth the basis or rate of his fee and failed to inform them that he was

either inactive or ineligible to practice law. In Pantano, among other things, respondent filed the initial probate in the wrong state, requested that the accountant prepare the wrong tax returns, failed to timely file or pay the decedent's income tax returns, failed to forward to the accountant the necessary documents for the preparation of the final tax return, failed to file the executor's account, failed to return his client's calls, and failed to release the file to the new attorney.

In Danyi, among other improprieties, respondent grossly neglected the matter by failing to file an answer or a declaratory judgment, used letterhead misrepresenting his status as an attorney in good standing in New Jersey and Pennsylvania, received checks for fees and costs but did not hold them inviolate in his escrow account, made misrepresentations about the status of the case, did not inform Danyi of his communications with his adversary about a ~~settlement proposal, and~~ failed to reply to Danyi's numerous requests about the status of the matter.

Finally, respondent twice misrepresented, in his Pennsylvania Annual Fee Forms, that he was eligible to practice law in New Jersey. In fact, on the dates that he filed the forms, October 22, 2003 and September 12, 2006, he was on the New Jersey Supreme Court's list of ineligible attorneys for failure to pay the Fund assessment.

The remaining issue is the appropriate form of discipline for respondent's numerous ethics offenses.

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

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:

(A) the disciplinary or disability order of the foreign jurisdiction was not entered;

(B) the disciplinary or disability order of the foreign jurisdiction does not apply to the respondent;

(C) the disciplinary or disability order of the foreign jurisdiction does not remain in full force and effect as the result of appellate proceedings;

(D) the procedure followed in the foreign disciplinary matter was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process; or

(E) the unethical conduct established warrants substantially different discipline.

A review of the record does not reveal any conditions that fall within the scope of subparagraphs (A) through (E).

Although research uncovered no New Jersey cases addressing similar conduct in the aggregate, the following cases offer some guidance on the proper level of discipline for respondent's violations.

An attorney who, like respondent, twice made misrepresentations to Pennsylvania disciplinary authorities,

practiced law while inactive in Pennsylvania, and made misrepresentations to a court and to his adversary about his inactive status received a reprimand in New Jersey. In re Davis, 194 N.J. 555 (2007). Specifically, the attorney misrepresented, in forms filed with the Pennsylvania CLE Board that he did not practice in Pennsylvania or represent Pennsylvania clients. Also, when the attorney learned that the Supreme Court of Pennsylvania was transferring him to inactive status for failure to comply with CLE requirements, he attempted to avoid the transfer by continuing his non-resident active status by making false statements to the CLE Board. In the Matter of Nathaniel Martin Davis, DRB 07-026 (April 27, 2007) (slip op. at 5.)

After being transferred to inactive status, the attorney continued to represent a client and, when confronted by his adversary about his inactive status, denied any knowledge of it, despite having received numerous notices to that effect. Finally, the attorney made false statements to the trial court about his inactive status. Ibid.

During both the Pennsylvania and the New Jersey proceedings, Davis advanced, in mitigation, that he did not have a disciplinary history; that the client matter was the only Pennsylvania case that he ever handled; that he had no intention of practicing in Pennsylvania again; that he was sorry for his

actions; that he fully cooperated with ethics authorities; and that he did not fully understand the limitations of his non-resident active status. Id. at 6.

In another Pennsylvania case, an attorney who exhibited conduct similar to Davis' was also reprimanded in New Jersey, having received a two-year suspension in Pennsylvania. In re Coleman, 185 N.J. 336 (2005). There, the attorney, who was aware that he had been transferred to inactive status in 1993, signed and filed 250 pleadings in mortgage foreclosure actions, from January through October 2002, having received \$7,000 for the above services. In the Matter of Thomas Joseph Coleman, DRB 05-198 (September 14, 2005) (slip op. at 5-6). The Pennsylvania Disciplinary Board found that the attorney signed the pleadings "under the belief that he was allowed to do so even though he was on inactive status. He thought that it was permissible as long as he did not take a more active role in the representation." Id. at 8. The Pennsylvania Supreme Court, however, agreed with three dissenting members of the Board that the attorney had been less than candid throughout the disciplinary process, when he asserted that he had not received any benefit from signing the pleadings and that he did not know that he could not sign documents while on inactive status,

having earlier conceded that he was unable to sign even correspondence. Id. at 10-11;22.

After the OAE filed a motion for reciprocal discipline, we determined that the appropriate discipline for Coleman was a one-year suspension, retroactive to the date of his Pennsylvania suspension. The Court agreed with that measure of discipline, but made the suspension prospective. In re Coleman, 185 N.J. 280 (2005). After Coleman filed a motion for reconsideration, asking the Court to make the suspension retroactive, the Court heard oral argument on the motion and determined to vacate the one-year suspension order and to impose a reprimand instead. In re Coleman, supra, 185 N.J. 336. The order did not detail the reasons for the Court's action.

Unlike Davis and Coleman, respondent has a disciplinary history and showed utter lack of concern for his clients' well-being. In one instance, his neglect led to the entry of a \$71,000 judgment against a client, Danyi, with whom he had maintained a thirty-year social and professional relationship.

In In re Sharma, 193 N.J. 599 (2008), the attorney was suspended for three months for misconduct in two matters. In one matter, he lacked diligence in handling the client's case, failed to communicate with the client, and violated R. 1:20-1(c) by failing to notify the OAE of his current addresses. In the

second matter, the attorney practiced law while ineligible to do so by making one court appearance in a landlord-tenant matter and by failing to maintain a bona fide office. The attorney was unaware that he was ineligible to practice law. He had received a censure and a reprimand, both in default matters.

Here, respondent's conduct was far worse than Sharma's. First, unlike Sharma, who made one court appearance while he was ineligible, respondent represented D'Amico and Danyi throughout two separate periods of ineligibility in New Jersey (three months and three years). He also practiced law while inactive in Pennsylvania. Second, unlike Sharma, respondent was aware that he was ineligible/inactive. Third, he committed other infractions not committed by Sharma: he did not reduce his fee arrangement with D'Amico and Danyi to writing, as required by the rules; did not promptly release the file to D'Amico's new attorney, as requested; did not keep the fee and cost payments in escrow until the performance of his services; made misrepresentations to Danyi; used a misleading letterhead; and twice misrepresented, in forms filed with Pennsylvania disciplinary authorities, that, at the time, he was an attorney in good standing in New Jersey.

In assessing the proper discipline for respondent, we also considered not only his disciplinary history (an admonition and a reprimand), but the character of his past infractions.

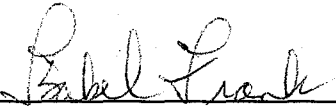
Although he represented to us, in the matter that led to his admonition, that he was "ready, willing and able" to pay the client the remainder of the sums due under his settlement agreement with the client, he unilaterally changed the terms of the agreement that called for the payment of the client's medical expenses. The client, therefore, refused to sign the release that he had prepared for her signature. He also did not comply with our instruction that he inform the OAE of the payment to the client. When new disciplinary charges were filed against him as a result of his breach of our directive, he failed to cooperate with the investigation of the grievance.

In this matter, too, respondent showed disregard for disciplinary authorities. On two occasions, he misled them that he was an attorney in good standing, knowing that he was not.

Taking into account the totality of respondent's unethical conduct, his disciplinary history, and the common thread that runs through his current and past offenses -- indifference toward ethics authorities -- we see no compelling reason to deviate from the discipline imposed on him in Pennsylvania. We, therefore, determine to suspend respondent for one year, the suspension to be retroactive to the date of his Pennsylvania suspension, January 4, 2008. We also determine to condition his reinstatement on his reinstatement in Pennsylvania.

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, Chair

By: 
for Julianne K. DeCore
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD


In the Matter of Andrew J. Brekus
Docket No. DRB 08-184

Argued: September 18, 2008

Decided: December 9, 2008

Disposition: One-year suspension

Members	Disbar	One-year Suspension	Reprimand	Dismiss	Disqualified	Did not participate
Pashman		X				
Frost		X				
Baugh		X				
Boylan		X				
Clark		X				
Doremus		X				
Lolla		X				
Stanton		X				
Wissinger		X				
Total:		9				

for 
Julianne K. DeCore
Chief Counsel