SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 06-044
District Docket No. XIV-05-564E

IN THE MATTER OF	:
	:
AVROHOM BECKER	:
	:
AN ATTORNEY AT LAW	:

Decision

Argued: March 16, 2006

Decided: April 28, 2006

Richard J. 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 was before us on a motion for reciprocal discipline filed by the Office of Attorney Ethics ("OAE"), based on respondent's three-month suspension in New York for violating DR 1-102(A)(4), DR 1-102(A)(5), and DR 1-102(A)(7). The first two DRs correspond to New Jersey RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation) and RPC 8.4(d)

(conduct prejudicial to the administration of justice). There is no RPC that corresponds to DR 1-102(A)(7) (conduct that adversely reflects on an attorney's fitness as a lawyer).

Respondent was admitted to the practice of law in New Jersey in 1988, and in New York in 1989. He has no history of discipline.

Respondent represented Ruth Kurtz in a personal injury matter arising from a 1993 fall on a sidewalk and consequent ankle fracture. Mrs. Kurtz died from cancer in 1994. Respondent did not learn of her death until 1997, after he received a $55,000 settlement offer from the defendant, the City of New York ("the City") and forwarded the proposal to Mrs. Kurtz. Her son, Samuel Kurtz, contacted respondent and advised him that his parents had died and had left heirs.

Respondent explained to Samuel that protracted and costly estate proceedings had to be initiated but, at Samuel's request, agreed to proceed without going to court. Instead, he altered the settlement documents by removing Mrs. Kurtz' first name from the captions and signature lines. Samuel signed his last name on each document, had the signatures notarized, and returned them to respondent. Respondent submitted the documents to the City without disclosing that Mrs. Kurtz had died three years earlier.

In September 1998, the City issued a check in the amount of $55,000, made payable to Ruth Kurtz and respondent. Samuel endorsed the check by signing the name "Ruth Kurtz" on the back of the check and respondent endorsed the check with his signature stamp. Respondent then deposited the check, took out his attorney fees, and turned the balance over to Samuel, who distributed the funds to the rest of the Kurtz family.

In October 1998, respondent filed the required closing statement in the Kurtz matter with the Office of Court Administration, referring to Mrs. Kurtz in the present tense and stating that she had been provided with her share of the settlement funds.

In January 2004, respondent informed the City of Mrs. Kurtz' death, when he filed a nunc pro tunc proceeding in Surrogate Court regarding the settlement funds, after having learned from New York disciplinary authorities, in late 2003, that he was under investigation. While respondent waited to see if the City objected or otherwise responded to the Surrogate Court proceedings, he placed $55,000 of his own money in an account, in the event the City intended to rescind the settlement. The City did not raise any objections or seek the return of the $55,000 settlement.

In May 2004, the Departmental Disciplinary Committee for the First Judicial Department of New York ("the New York Committee") filed a statement of charges against respondent, alleging that he had violated DR 1-102(A)(4), DR 1-102(A)(5), and DR 1-102(A)(7). Respondent filed an answer that essentially admitted all of the allegations against him.

Referee Frederic S. Berman presided over the New York hearing in September 2004. The New York Committee sought a one-year suspension. Respondent argued for a private reprimand, based on the mitigating factors he put forward, including his frequent pro bono work; his deep remorse; his prior unblemished record; his desire to accommodate his client without any tangible benefit to himself; his devotion to his immediate family, consisting of his wife and ten children; his cooperation with the court and disciplinary authorities; his deposit of $55,000 of personal funds into an escrow account to protect his deceased client's family, in the event that the City sought the return of the settlement proceeds; and the introduction of extensive testimony on his good character and reputation.[1] The referee recommended that respondent receive a public censure, comparable to New Jersey's reprimand.

[1] The character testimony was offered by two sitting judges, a rabbi, and three attorneys. Over thirty letters were submitted in respondent's behalf.

Before the hearing panel, the New York Committee again sought a one-year suspension and respondent again argued for a private reprimand. The hearing panel considered a number of mitigating factors, including respondent's lack of venal intent or financial gain, his prior unblemished record, his pro bono work, his reputation, his remorse, his cooperation with disciplinary authorities, and his willingness to place his own funds in a separate account, in case his client's settlement with the City was rescinded. The hearing panel recommended that the referee's report be affirmed in its entirety, including the recommendation for a public censure.

The case proceeded to the Supreme Court of New York, Appellate Division, First Judicial Department, which issued an opinion in October 2005, imposing a three-month suspension, effective November 10, 2005.

The OAE seeks the imposition of a three-month suspension. The OAE noted that respondent advised it of this matter in October 2005, shortly after the entry of the New York order.[2] The OAE urged that any suspension imposed be retroactive to November 10, 2005, the effective date of respondent's New York suspension, because he certified to the OAE that he had not

[2] Respondent's letter states that he has not completed the required continuing legal education courses and that he does not practice law in New Jersey.

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

Respondent is guilty of numerous instances of misrepresentation in a single matter, including his alteration of the settlement documents by omitting his client's first name, allowing his client's son to sign the altered documents, submitting the documents to the City without disclosing his client's death, and endorsing and depositing the settlement check.

When attorneys are guilty of lack of candor to a tribunal, although suspensions are the most frequent sanctions, the range of discipline is wide, varying from an admonition to a lengthy term of suspension.

Admonitions and reprimands: In the Matter of Robin K. Lord, DRB 01-250 (2001) (admonition where the attorney failed to reveal her client's real name to a municipal court judge when her client appeared in court using an alias, thus resulting in a lower sentence because the court was not aware of the client's significant history of motor vehicle infractions; in mitigation, the attorney disclosed her client's real name to the municipal court the day after the court appearance, whereupon the sentence was vacated); In re Whitmore, 117 N.J. 472 (1990) (reprimand where a municipal prosecutor failed to disclose to the court

that a police officer whose testimony was critical to the prosecution of a charge of driving while intoxicated intentionally left the courtroom before the case was called, resulting in the dismissal of the charge; attorney did not have an improper motive and "may not have clearly seen the distinct line that must be drawn between his obligations to the court and his commitment to the State, on the one hand, and, on the other, his feelings of loyalty and respect for the police officers with whom he deals on a regular basis." Id. at 480); In re Mazeau, 122 N.J. 244 (1991) (attorney reprimanded for failure to disclose to a court his representation of a client in a prior lawsuit, where that representation would have been a factor in the court's ruling on the attorney's motion to file a late notice of tort claim);

Suspensions (three months): In re Georgi, 180 N.J. 525 (2004) (attorney suspended for three months where he charged an excessive contingent fee, made misrepresentations to his adversary and to the court, counseled his client to make misrepresentations to the court, made loans to his client without complying with the required safeguards of RPC 1.8(a), engaged in a conflict of interest by arranging for one client to lend money to another client, made misrepresentations to the OAE, and violated recordkeeping requirements); In re Chasan, 154

N.J. 8 (1998) (three-month suspension for attorney who distributed a fee to himself after representing that he would maintain the fee in his trust account pending a dispute with another attorney over the division of the fee and then misled the court into believing that he had retained the fee in his trust account; attorney misled his adversary also, failed to retain fees in a separate account, and violated recordkeeping requirements); In re Mark, 132 N.J. 268 (1993) (three-month suspension for attorney who fabricated two letters and submitted them to a trial court and to his adversary in a litigated matter); In re Norton and Kress, 128 N.J. 520 (1992) (both the prosecutor and defense counsel were suspended for three months for permitting the dismissal of a drunk-driving charge; although the attorneys represented to the municipal court that the arresting officer did not wish to proceed with the case, they failed to disclose that the reason for the dismissal was the officer's desire to give a "break" to someone who supported law enforcement); In re Kernan, 118 N.J. 361 (1990) (attorney received a three-month suspension for failure to inform the court, in his own matrimonial matter, that he had transferred property to his mother for no consideration, and failure to amend his certification listing his assets; attorney had a prior private reprimand);

Suspensions (six months): In re Forrest, 158 N.J. 429 (1999) (attorney suspended for six months for failure to disclose the death of his client to the court, to his adversary, and to an arbitrator; the attorney's motive was to obtain a personal injury settlement); In re Eskin, 158 N.J. 259 (1999) (six-month suspension on a motion for reciprocal discipline, where an attorney forged and falsely notarized his client's signature to a notice of claim served after the statute of limitations had expired, and served a second notice of claim containing a material misrepresentation); In re Jenkins, 151 N.J. 473 (1997) (six-month suspension imposed where the attorney wrote a decedent's name on a medical authorization form, presented it to a hospital, even though the individual had died a year earlier, and misrepresented his position in the matter); In re Telson, 138 N.J. 47 (1994) (attorney suspended for six months after he concealed a judge's docket entry dismissing his client's divorce complaint, obtained a divorce judgment from another judge without disclosing that the first judge had denied the request, and denied his conduct to a third judge, only to admit to this judge one week later that he had lied because he was scared);

Suspensions (one year or more): In re Cillo, 155 N.J. 599 (1998) (one-year suspension where, after misrepresenting to a judge that a case had been settled and that no other attorney would be appearing for a conference, the attorney obtained a judge's signature on an order dismissing the action and disbursing all escrow funds to his client; the attorney knew that at least one other lawyer would be appearing at the conference and that a trust agreement required that at least $500,000 of the escrow funds remain in reserve); and In re Kornreich, 149 N.J. 346 (1997) (three-year suspension where attorney, who had been in an automobile accident, misrepresented to the police, her lawyer, and a municipal court judge that her babysitter had been operating her vehicle and presented false evidence in an attempt to falsely accuse the babysitter of her own wrongdoing; two members of the Court voted for disbarment).

Respondent's misrepresentations were serious, repeated, and clearly distinguishable from the admonition and reprimand cases, where the misconduct was limited to a single instance (failure to reveal a client's true name; failure to disclose absence of critical police officer witness; failure to inform court of prior representation of a party). He engaged in dishonest conduct in several instances, including his alteration of the settlement documents, his submission of a misleading closing

statement, and his deposit of a settlement check made payable to a deceased client. His conduct warrants a term of suspension.

In determining the length of that suspension, we placed a great deal of weight on the mitigating factors. Highly significant was the lack of benefit to respondent from his actions. In a similar matter, where an attorney failed to disclose the death of a client, In re Forrest, supra, 158 N.J. 429 (1999), the Court ordered a six-month suspension where the attorney stood to gain from his actions: the larger the settlement, the larger the attorney's fee. Here, respondent's motivation was the conclusion of a settlement already in place. Because the City did not seek any refund of the $55,000, it is likely that Mrs. Kurtz' future pain and suffering played little or no role in her recovery.[3]

In addition, unlike attorney Forrest, respondent has an unblemished disciplinary history, expressed remorse, and is deeply involved in pro bono activities.

Another point we considered was that New York, where the misconduct occurred, deemed a three-month suspension sufficient discipline. Considering that New York is the injured jurisdiction and that respondent has not practiced in New

[3] The nature of respondent's fee agreement with Mrs. Kurtz is unknown. It may or may not have been contingent on the outcome of the case.

Jersey, the term of suspension imposed in New York strongly suggests that it is the most appropriate quantum of discipline. We agree with New York that a three-month suspension is the right sanction in this matter.

One more issue remains. The OAE urged that any suspension imposed be retroactive to November 10, 2005, the effective date of respondent's New York suspension, in light of his certification that he had not practiced in New Jersey during his suspension, and would not do so while this matter was pending. We are aware that the Court does not take into account a respondent's voluntary removal from the practice of law. "If in the future a respondent seeks to urge suspension from practice as a relevant *mitigating* factor, the suspension must be imposed by order of the Court and not through the voluntary action of the respondent. Otherwise, the Court will be unable to assess and supervise the suspension." In re Farr, 115 N.J. 231, 238 (1989). Farr had not been suspended from the practice of law. Here, respondent was suspended in New York. We, therefore, believe that the three-month suspension in New Jersey should be retroactive to the date of the New York suspension, November 10, 2005.

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

Disciplinary Review Board
Mary J. Maudsley, Chair

By: Julianne K. DeCore
Julianne K. DeCore
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Avrohom Becker
Docket No. DRB 06-044

Argued: March 16, 2006

Decided: April 28, 2006

Disposition: Three-month suspension

Members	Disbar	Three-month Suspension	Reprimand	Dismiss	Disqualified	Did not participate
Maudsley		X				
O'Shaughnessy		X				
Boylan		X				
Holmes		X				
Lolla		X				
Neuwirth		X				
Pashman		X				
Stanton		X				
Wissinger		X				
Total:		9				

Julianne K. DeCore
Chief Counsel