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SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 06-281
District Docket No. XIV-04-577E
and
Docket No. DRB 06-324
District Docket No. XIV-04-578E

IN THE MATTER OF

DANIEL SETH CHILEWICH

AN ATTORNEY AT LAW

IN THE MATTER OF

OLGA SORKIN

AN ATTORNEY AT LAW

Decision

Argued: January 18, 2007

Decided: March 20, 2007

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

Kim D. Ringler appeared on behalf of respondents.

To the Honorable Chief Justice and Associate Justices of the Supreme Court of New Jersey.

These matters came before us on separate motions for final discipline filed by the Office of Attorney Ethics (OAE), following respondents' guilty pleas in the Supreme Court of New York, County of New York, to the first degree offense of offering a false instrument for filing, a Class E felony, in violation of § 175.35 of the Penal Law of the State of New York. Because respondents were codefendants, and the facts underlying their pleas are nearly identical, we consolidate these matters for the purpose of rendering our opinion. We agree with the OAE's recommendation that each respondent should each receive a one-year retroactive suspension.

Respondent Daniel Seth Chilewich was admitted to the New Jersey bar in 1992 and the New York bar in 1993. A New York resident, he does not maintain an office for the practice of law in New Jersey. Respondent Olga Sorkin was admitted to the New Jersey and New York bars in 1993. She, too, does not maintain an office for the practice of law in New Jersey, although she resides in Closter, New Jersey.

Chilewich and Sorkin have unblemished disciplinary histories in New Jersey. However, on February 16, 2005 and

November 14, 2005, respectively, they were temporarily suspended in New Jersey, after they had each pleaded guilty to the offense underlying the OAE's motions for final discipline. In re Chilewich, 182 N.J. 434 (2005); In re Sorkin, 185 N.J. 316 (2005).

In February 2003, Chilewich and Sorkin were two of six personal injury attorneys, who, along with a husband and wife "runner team," were charged in a ninety-three count indictment with participating in a criminal enterprise from 1995 through 2000. The indictment arose out of respondents' participation in a "running scheme," whereby the husband and wife runners – in exchange for the lawyers' payments of referral fees – bribed New York City hospital employees to disclose the identity of patients/accident victims, contact the patients, and refer them to respondents and other lawyers.

The first count of the indictment charged Chilewich and Sorkin with the crime of enterprise corruption, which was based on the following criminal activity: first degree commercial bribery of hospital employees, third degree bribery of hospital employees, first degree filing a false retainer report with the New York State Office of Court Administration (OCA), fourth degree money laundering, and combination in restraint of trade

and competition. Respondents also were charged individually with, among other things, six counts of first degree offering a false instrument for filing, which based on Chilewich's conduct during July 2000, and Sorkin's conduct during the months of August and September 2000.

As stated previously, respondents each pleaded guilty to one count of offering a false instrument for filing. The guilty pleas and underlying conduct of the respondents are detailed below.

<u>The Chilewich Matter</u>

On February 2, 2005, Chilewich appeared in the Supreme Court of New York, County of New York, and pleaded guilty to one count of first degree offering a false instrument for filing, a Class E felony, in violation of § 175.35 of the New York Penal Law.[1] At the plea proceeding, Chilewich read the following into the record:

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[1] <u>N. Y. Penal Law</u> § 175.35 (2006) makes it a first degree crime and a class E felony to offer

> "a false instrument for filing . . . when, knowing that a written instrument contains a

(footnote cont'd on next page)

In the County of New York and elsewhere, from on or about July fourteen, two thousand, to on or about July twenty-four, two thousand, acting in concert with Scott Sessler and our law firm Sessler and Chilewich LLP, I caused a retainer statement regarding a client named Evelyn Relaford to be filed with the Office of Court Administration [OCA].

At the time that this retainer statement was filed, I knew that this retainer statement contained a false statement and false information, in that in answer to question seven, the client Relaford had not contacted my law firm directly.

In fact I had paid Jean Phillipe Landi money and he had supplied me with Relaford's name.

(footnote cont'd)

false statement or false information, and with intent to defraud the state or any political subdivision, public authority or public benefit corporation of the state, he offers or presents it to a public office, public servant, public authority or public benefit corporation with the knowledge or belief that it will be filed with, registered or recorded in or otherwise become a part of the records of such public office, public servant, public authority or public benefit corporation.

Offering a false instrument for filing in the first degree is a class E felony.

> When I caused the retainer statement to be filed, I intended to defraud OCA, and I had the knowledge and belief that it would in fact be filed with the Office of Court Administration.
>
> Furthermore I, along with my partner Scott Sessler purchased other client referrals from Landi and concealed my relationship with Landi by falsifying documents filed with OCA.
>
> [February 2, 2005 transcript of plea, Supreme Court of the State of New York, County of New York, pp. 4-6.]

On January 19, 2006, Chilewich was sentenced to five years' probation and ordered to forfeit $75,000, which he had already paid.

In its brief submitted to us in the Chilewich matter, the OAE explained that New York requires personal injury lawyers to file retainer statements with the OCA for each personal injury case that they accept. According to the OAE:

> Personal injury lawyers are required to file a retainer statement with the [OCA] for each personal injury case they accept. The retainer statement must provide basic details about the retainer, including the name, address, occupation and relationship of the person who referred the matter to the lawyer. New York State Judiciary Law prohibits lawyers from paying referral fees

to and splitting settlements with non-lawyers.

[September 27, 2006 Brief in Support of Motion for Final Discipline, p. 2.]

Because Chilewich pleaded guilty to a New York felony, he was subject to that state's automatic disbarment rule.[2] Chilewich was disbarred in New York in May 2005.[3]

Chilewich's conviction was based on his plea to a single instance of offering a false instrument for filing. However, during the course of this disciplinary proceeding, Chilewich admitted accepting "illegal referrals in approximately twenty separate matters." Accordingly, the OAE seeks a one-year suspension, retroactive to February 16, 2005, the date Chilewich was placed on temporary suspension in New Jersey.

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[2] Under New York law, upon conviction of a felony, an attorney "cease[s] to be an attorney . . ., or to be competent to practice law as such." N. Y. Judiciary Law § 90(4)(a) (2006). Thus, upon presentation of a certified or exemplified copy of the judgment of conviction, the name of the attorney "shall, by order of the court, be struck from the roll of attorneys." N.Y. Judiciary Law § 90(4)(b) (2006).

[3] In New York, a disbarred attorney can seek reinstatement seven years after the effective date of the disbarment.

The Sorkin Matter

On May 19, 2005, Sorkin pleaded guilty in the Supreme Court of New York to one count of first degree offering a false instrument for filing, in violation of § 175.35 of the Penal Law. At the plea and sentencing proceedings, Sorkin read the following into the record:

> In the County of New York and elsewhere, from on or about August 3, 2002, to on or about August 11, 2002,[4] acting with my law firm, I caused a retainer statement regarding a client named Gary Suniga (phonetic spelling) to be filed with the [OCA].
>
> Question 7 on the retainer statement asked for the name and address, occupation and relationship of the person referring the client. The answer to question 7 on the retainer statement in the case was advertizement [sic]. At the time that this retainer statement was filed, I knew this was not the true source of referral of the Suniga case, and thus the answer was false.

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[4] The reference to the year 2002 was likely a mistake, as the indictment encompassed the years 1995 through 2000, and the specific counts charging Sorkin with offering a false instrument for filing encompassed the months of August and September 2000. Moreover, the August 3 through 11, 2002 time period referenced in Sorkin's plea tracks the same time period in two counts of the indictment.

When I caused the retainer statement to be filed, I intended to conceal the true source of the referral, and that Olga Sorkin, PC, had agreed to pay money. When the retainer statement regarding this case was prepared, I had the knowledge and belief that the retainer statement would be filed with OCA.

[May 19, 2005 Transcript of Sentence, Supreme Court of New York, New York County, pp. 6-7.]

Sorkin was sentenced to five years' probation and ordered to forfeit $50,000.

On January 26, 2006, the Supreme Court of New York, Appellate Division, First Judicial Department, ordered Sorkin's name stricken from the roll of attorneys and counselors-at-law "upon the ground that she has been disbarred upon her conviction of a felony as defined by Judiciary Law § 90(4)(3)."

Like Chilewich, Sorkin's conviction was based on her plea to a single instance of offering a false instrument for filing. However, during the course of this disciplinary proceeding, Sorkin admitted to using a runner "on approximately fifty separate occasions." Thus, the OAE seeks a one-year suspension, retroactive to November 14, 2005, the date she was placed on temporary suspension in New Jersey.

With respect to each respondent in this matter, Office of Board Counsel requested the OAE to provide us with copies of the pre-sentence report and pre-sentence memoranda prepared and submitted in the New York criminal cases. The OAE informed Office of Board Counsel that no such documents exist, as the matters involved a "streamlined plea bargain." Given the lack of pre-sentence reports and memoranda, the absence of disciplinary proceedings in New York, and the pro forma disbarment process there, the record here is limited to what the OAE has provided in its appendices, which consist of copies of the indictment, the transcripts of respondents' pleas and sentencing, and respondents' admissions in these proceedings to using a runner.

Following a review of the full record, we determine to grant the OAE's motion for final discipline.

Final discipline proceedings in New Jersey are governed by R. 1:20-13(c). The rule authorizes the OAE to file a motion for final discipline upon the conclusion of a criminal matter "involving findings or admissions of guilt." R. 1:20-13(c)(2).

The existence of a criminal conviction is conclusive evidence of respondent's guilt. R. 1:20-13(c)(1); In re Gipson, 103 N.J. 75, 77 (1986). An attorney who commits a crime violates RPC 8.4(b). In re Margrabia, 150 N.J. 198, 201 (1997). Thus, each

respondent's guilty plea to one count of the first degree offense of offering a false instrument for filing constituted a violation of RPC 8.4(b), which states that "[i]t is *professional misconduct* for a lawyer to . . . commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects."

Respondents' criminal activities form the basis of several RPC violations. First, by pleading guilty to filing false retainer statements in which they misrepresented the source of their clients' business, respondents violated RPC 8.4(b), RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation), and RPC 8.4(d) (conduct prejudicial to the administration of justice). Second, by using runners to obtain clients, respondents violated RPC 7.2(c) (giving anything of value to a person for recommending the lawyer's services) and RPC 7.3(d) (compensating or giving anything of value to a person or organization to recommend or secure the lawyer's employment by a client).

At Chilewich's plea, he admitted that he had paid a runner for one referral concealed on one false retainer statement, which formed the basis of his guilty plea. Moreover, he admitted to the court that he and his partner had purchased other referrals from

the runner and concealed them by filing a false retainer statement. Through counsel in this disciplinary proceeding, Chilewich admitted using a runner in twenty cases.

At Sorkin's plea, she admitted only that the single false retainer statement on which her guilty plea was based had falsely identified the source of the referral as an advertisement. She mentioned nothing about having obtained that client, or any other client, from a runner. However, through counsel in this proceeding, Sorkin admitted using a runner in fifty cases.

Although Chilewich's and Sorkin's guilty pleas were based on the filing of a false retainer statement in one matter, in reaching our decision, we take into consideration their admissions to using a runner in twenty and fifty cases, respectively. See, e.g., In re Spina, 121 N.J. 378, 389-90 (1990) (in reaching a decision on a motion for final discipline, any other relevant documents may be considered in order to obtain the "full picture;" moreover, the Supreme Court observed, "we do no violence to the procedures that govern our disciplinary function nor [sic] to notions of due process when we take into consideration [an attorney's] acknowledged" misconduct); In re Gallo, 178 N.J. 115, 120 (2003) (on a motion for final discipline, "relevant information that places an attorney's conduct in its true light"

cannot be ignored, as the respondent, grievant, and the public "are entitled to a disciplinary review process in which a full, undistorted picture is the basis for disciplinary sanctions").

The appropriate measure of discipline in a runner case is determined on a case-by-case basis, In re Pajerowski, 156 N.J. 509 (1998), and ranges from a three-month suspension to disbarment. See, e.g., In re Pease, 167 N.J. 597 (2001) (three-month suspension), and Pajerowski, supra, 156 N.J. 509 (disbarment). In a case similar to the matters now before us, the attorney received a one-year suspension. In re Berger, 185 N.J. 269 (2005).

The policy served by the prohibition against fee sharing with a non-lawyer is

> to ensure that any recommendation made by a non-attorney to a potential client to seek the services of a particular lawyer is made in the *client's* interest, and not to serve the business impulses of either the lawyer or the person making the referral; it also eliminates any monetary incentive for transfer of control over the handling of legal matters from the attorney to the lay person who is responsible for referring in the client.
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> [In re Weinroth, 100 N.J. 343, 350 (1985).]

In re Frankel, 20 N.J. 588 (1956), was the first case in which the Supreme Court considered the appropriate measure of discipline to be imposed upon an attorney who obtains a client

through a runner. There, Frankel paid a runner twenty-five percent of his net fee to solicit personal injury clients. He was charged with violating the Canons of Professional Ethics that prohibited soliciting clients (Canon 28) and dividing fees with a non-attorney (Canon 34).

In 1953, Frankel paid the runner $6,303.53, which constituted the runner's primary source of income. Frankel contended that the payment of this money was to compensate him for investigatory services. Although Canon 28 permitted disbarment, the Court imposed a two-year suspension because Frankel was the first attorney to be prosecuted for this type of violation, and he previously had an unblemished professional reputation.

Although Frankel was suspended for two years, the Court's five-member majority cautioned the bar that "[f]or such infractions in the future more drastic measures may be expected." Id. at 599. Justice Brennan authored a dissent, joined by Chief Justice Vanderbilt, predicting that, in the future, similar misconduct would, consistent with the majority's reference to "more drastic measures," warrant disbarment. Id. at 605.

Two years later, in In re Introcaso, 26 N.J. 353 (1958), the Court addressed the issue of the use of a runner to solicit clients in three criminal cases. The Court found overwhelming evidence that the attorney had employed a runner to solicit clients in all three matters, improperly divided legal fees, and lacked candor in his testimony. Although the Court's "immediate impulse" was to disbar the attorney, id. at 361, he received a three-year suspension because the misconduct had occurred prior to Frankel, and the attorney had an unblemished disciplinary history.

In 1972, the Court imposed a three-month suspension on an attorney who paid part of his fees to a runner from whom he had accepted referrals in thirty cases. In re Bregg, 61 N.J. 476 (1972). The Court commented that, unlike the attorneys in Frankel and Introcaso, who had a "studied and hardened disregard for ethical standards, accompanied by a total lack of candor" the attorney in Bregg was "completely candid" and appeared to be "sincerely contrite." Id. at 478.

In In re Shaw, 88 N.J. 433 (1982), the attorney represented a passenger in a lawsuit against the driver of the same automobile and represented both the passenger and the driver in litigation filed against another driver. In addition, he used a

runner to solicit a client in a personal injury matter, "purchased" the client's cause of action for $30,000, and then settled the claim for $97,500. When the attorney received the settlement check, he gave it to the runner, who forged the client's endorsement, and deposited the check into the runner's own bank account, rather than the attorney's trust account. The attorney was disbarred.

In In re Pajerowski, supra, 156 N.J. 509, the Court disbarred an attorney who, for a period of almost four years, used a runner to solicit personal injury clients, split fees with the runner, and compensated him for referrals in eight matters involving eleven clients. While claiming that the runner was his "office manager," in 1994, the attorney had compensated him at the rate of $3500 per week ($182,000 a year) for the referrals.

In each case, the runner visited the prospective clients (who had been in motor vehicle accidents) either at their homes or in hospitals on the day of the accident or very shortly thereafter. Retainer agreement in hand, the runner tried to persuade the individuals to retain the attorney to represent them in connection with claims arising out of the accidents. In some cases, the runner instructed the prospective clients to

obtain treatment from specific medical providers, despite the clients' protestations that they had not been injured.

The Court found that the attorney knew about and condoned the runner's conduct in assisting with the filing of false medical claims. By splitting fees with the runner, the attorney assisted in the unauthorized practice of law. In addition, the attorney advanced sums of money to clients in ten instances and engaged in a conflict of interest situation. In ordering the attorney's disbarment, the Court noted that

> [a]lthough the public needs to be protected from the solicitation of legal business by runners, we do not find that disbarment is called for in every 'runner' case. In determining the appropriate discipline to be imposed in prior 'runner' cases . . . we have considered the circumstances surrounding each case. We intend to adhere to that approach in such cases.
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> [Id. at 521-22.]

Finding that Pajerowski acted out of economic greed, took advantage of vulnerable individuals, condoned his runner's conduct in assisting clients to file false medical claims, and committed other less serious acts of misconduct, the Court imposed disbarment.

In In re Pease, supra, 167 N.J. 597, the Court imposed a three-month suspension on an attorney who paid a runner for

referring fifteen prospective clients to him and for loaning funds to one of those clients. The attorney received a short-term suspension because his misconduct was limited to a four-month period, which took place more than ten years prior to the ethics proceeding, when the attorney was a relatively young and inexperienced. Moreover, the attorney had not been disciplined previously, and he had performed a significant amount of community service.

In 2005, on a motion for reciprocal discipline, the Supreme Court imposed a one-year suspension upon an attorney who had received a three-year suspension in New York for filing approximately 350 false retainer statements between January 1995 and August 1996, and paying two runners nearly $42,000 between January 1995 and December 1996, in violation of RPC 3.3(a)(1), RPC 7.2(c), RPC 7.3(d), RPC 8.4(c), and RPC 8.4(d). In re Berger, supra, 185 N.J. 269.[5]

In Berger, we accepted the OAE's recommended discipline and voted to impose a one-year suspension. In reaching our

[5] Unlike respondents, Berger apparently avoided criminal prosecution for his misconduct.

determination, we took into consideration that, despite the New York court's determination that the attorney had filed 350 "inaccurate, incomplete and/or misleading" statements, the record did not "clearly reveal in how many of those 350 cases respondent used misleading information to cover up his use of the runner," although one of the runners testified that he had referred more than ten cases to the attorney. In re Berger, DRB 05-192 (September 15, 2005) (slip op. at 15, 16 n.6). Moreover, the record did not "reveal what portion of the moneys paid to the runners was for referral fees," inasmuch as the runners also provided the attorney with investigative services. Ibid. Nevertheless, we concluded:

> What is known is that respondent engaged in a pattern of paying referral fees, and that all of the retainer statements were, at a minimum, incomplete. We cannot know on how many occasions respondent formed the mens rea to misrepresent to the court the source of his client's referrals.
>
> [Id. at 15-16.]

Ultimately, the one-year suspension was based on the known facts that Berger used runners to obtain clients and caused 350 false retainer statements to be filed, although we could not discern how many of the statements involved runner referrals. Id. at 16. In mitigation, we took into account the length of

time (nine years) that had passed between the misconduct (1996) and the disciplinary action in New Jersey (2005). Id. at 18. While the delay was due, in part, to respondent's failure to report the New York discipline to New Jersey ethics authorities, his lapse was the result of his New York disciplinary counsel's failure to advise him of that requirement. Id. at 17-18. The New Jersey suspension was retroactive to the date of respondent's suspension in New York.

After the OAE's involvement in this case, Chilewich admitted to using a runner and, presumably, filing a false retainer statement in approximately twenty cases in July 2000, and Sorkin admitted to using a runner and, presumably, filing a false retainer statement in approximately fifty cases between November 1999 and February 2000. We acknowledge that, in previous cases, three-month suspensions were imposed on attorneys who had used runners to obtain a similar number of cases. See, e.g., Bregg, supra, 61 N.J. 476 (thirty cases), and Pease, supra, 167 N.J. 597 (fifteen cases). However, unlike respondents, the attorneys in those cases did not misrepresent to the court the origination of their cases.

Respondents' actions are similar to those of the New York attorney in Berger, who also used runners and filed false

retainer statements with the New York OCA. Berger received a one-year suspension, due to the length of time in which he had engaged in the practice of using runners and filing false retainer statements (nineteen months) and "the serious additional element of his misrepresentations to the New York OCA." These factors were mitigated by the passage of time (nine years) between the misconduct and the New Jersey disciplinary proceeding.

Here, as in Berger, considerable time (six years) has elapsed between respondents' misconduct and the disciplinary proceedings in New Jersey. Two important differences render it necessary to balance the conduct of respondents with that of Berger's in order to justifiy the same result. First, unlike the attorney in Berger (whose misconduct continued for more than a year-and-a-half), respondents' unethical behavior was limited to one month for Chilewich and three months for Sorkin. Second, in Berger, it was not known how many retainer statements had been filed with the intent to mislead the OCA. Here, however, Chilewich admitted having used a runner in twenty cases, and Sorkin admitted having done so in fifty. All the cases originated with the runner. Thus, the record establishes that Chilewich and Sorkin filed more false retainer statements in a

shorter period of time than did Berger. All things being equal, there is no reason to impose discipline in this case that is different from that imposed in <u>Berger</u>.

In light of the foregoing, we determine to impose a one-year suspension on Chilewich and on Sorkin, retroactive to the dates of their temporary suspensions in New Jersey, February 16, 2005 and November 14, 2005, respectively. To the extent that the number of false retainer statements filed by Sorkin seems high as compared to Chilewich's twenty and Berger's "more than ten," we note that both the district attorney and the judge in her criminal proceeding believed that she was entitled to lenient treatment based on her limited participation in the enterprise, and that she was required to forfeit $25,000 less than Chilewich.

Members Baugh and Lolla 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 <u>R.</u> 1:20-17.

Disciplinary Review Board
William J. O'Shaughnessy
Chair

By: [signature]
Julianne K. DeCore
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

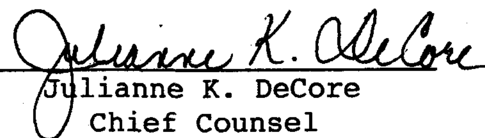
In the Matters of Daniel Seth Chilewich
Docket No. DRB 06-281

Argued: January 18, 2007

Decided: March 20, 2007

Disposition: One-year suspension

Members	Disbar	One-year retroactive 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:		7				2



Julianne K. DeCore
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

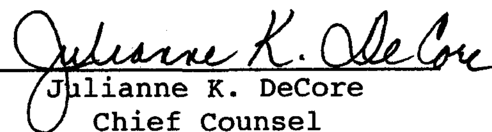
In the Matters of Olga Sorkin
Docket No. DRB 06-324

Argued: January 18, 2007

Decided: March 20, 2007

Disposition: One-year suspension

Members	Disbar	One-year retroactive 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:		7				2



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