

SUPREME COURT OF NEW JERSEY  
Disciplinary Review Board  
Docket No. DRB 01-317

---

IN THE MATTER OF :  
: :  
JAMES FRANCIS PEARN, JR. :  
: :  
AN ATTORNEY AT LAW :  
:

---

Decision

Argued: November 15, 2001

Decided: February 8, 2002

Richard J. Engelhardt 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 was before us on a motion for reciprocal discipline filed by the Office of Attorney Ethics ("OAE"), based upon respondent's three-year suspension in the Commonwealth of Pennsylvania.

Respondent was admitted to the New Jersey bar in 1983. He has no disciplinary history.

On December 28, 2000 respondent was suspended in Pennsylvania for three years for violations of *RPC* 1.5(a) (excessive fee) and *RPC* 8.4(c) (conduct involving dishonesty,

fraud, deceit or misrepresentation). Respondent failed to notify the OAE of his suspension in Pennsylvania, as required by R. 1:20-14(a)(1).

According to the October 26, 2000 report of the Disciplinary Board of the Supreme Court of Pennsylvania, respondent began employment in June 1991 in the workers' compensation defense department of a law firm, having left a house counsel position with a risk management company. Because of his relationship with his former employer, respondent brought with him clients with hundreds of workers' compensation cases. Although the firm was satisfied with respondent's competence, members of the firm notified him several times between 1992 and 1996 that the number of his billable hours was not satisfactory. Although respondent's low productivity limited his income, it did not jeopardize his employment because of the firm's interest in his continuing relationship with his former employer.

In August 1996 the firm learned that respondent was not completing the necessary work on his files. A client notified the firm of an adverse ruling in which the judge found that respondent had failed to submit proposed findings of fact, conclusions of law and a brief. Because the client demanded to receive copies of documents immediately and because respondent was on vacation at that time, respondent's supervisor directed staff to locate the documents. A search of the files and computer revealed no proposed findings of fact, conclusions of law or brief. The firm reviewed respondent's files and discovered other cases in which documents were either not submitted or were overdue. The firm then assigned three attorneys to audit all of respondent's files and discovered cases in which respondent had

billed for work not performed. The audit later increased in scope — the firm assigned six to eight attorneys and an outside auditing firm to review respondent's closed files as well. The audit revealed, and respondent stipulated, that from July 1991 through September 1996, respondent billed for approximately 340 hours of services not provided. The firm then returned between \$30,000 and \$40,000 to the relevant clients. Respondent failed to disclose to the clients that he had not performed services for which they had paid and that their cases had been or could be adversely affected. Upon being confronted by his supervisor, respondent stated that he had fallen behind in his work and had billed for services that he intended to perform in the future. Because respondent had failed to timely submit documents to the courts, however, he began to receive decisions, apparently adverse, indicating that no briefs had been filed. Although respondent was aware of these circumstances, for several years he engaged in this pattern of billing clients for services that he failed to perform. Respondent never asked the firm to relieve him of the responsibility for some of these files. In October 1996 respondent resigned from the firm.

The OAE urged us to impose a three-year suspension.

\* \* \*

Following a review of the full record, we determined to grant the OAE's motion for reciprocal discipline and to impose a three-year suspension.

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

which provides as follows:

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:

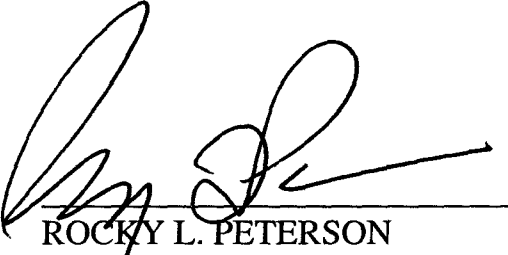
- (A) the disciplinary or disability order of the foreign jurisdiction was not entered;
- (B) the disciplinary or disability order of the foreign jurisdiction does not apply to the respondent;
- (C) the disciplinary or disability order of the foreign jurisdiction does not remain in full force and effect 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;
- (E) the misconduct established warrants substantially different discipline.

A review of the record does not reveal any conditions that would fall within the ambit of subparagraphs (A) through (E). In New Jersey, the Court has imposed suspensions or disbarment on attorneys who have misrepresented the legal services provided. *See, e.g., In re Ort*, 134 N.J. 146 (1993) (attorney disbarred for charging an excessive and unreasonable fee in an estate matter, misrepresenting, on his time sheets, the value of the services performed, withdrawing his fee from estate funds without his client's authorization, failing to communicate with a client, failing to prepare a written fee agreement and failing to abide by a client's decisions concerning the objectives of the representation); *In re Cohen*, 114 N.J. 51 (1989) (attorney suspended for one year for the reckless preparation of a fee

statement, conflict of interest, lack of diligence and failure to communicate with a client); *In re Hecker*, 109 N.J. 539 (1988) (six-month suspension of municipal attorney who billed for services not rendered, concealed personal assets to avoid a civil judgment, filed harassing litigation and engaged in conflicts of interest); *In re Wolk*, 82 N.J. 326 (1980) (disbarment imposed on attorney who submitted fraudulent affidavit of services to court and represented a client in a business matter in which the attorney had an interest).

After consideration of the relevant circumstances, we found no compelling reason to deviate from the discipline imposed in Pennsylvania. We, thus, unanimously determined to suspend respondent for three years. One member did not participate.

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

By:   
ROCKY L. PETERSON  
Chair  
Disciplinary Review Board

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

In the Matter of James Francis Pearn, Jr.  
Docket No. DRB 01-317

Argued: November 15, 2001

Decided: February 8, 2002

Disposition: three-year suspension

<i>Members</i>	<i>Disbar</i>	<i>Three-year Suspension</i>	<i>Reprimand</i>	<i>Admonition</i>	<i>Dismiss</i>	<i>Disqualified</i>	<i>Did not participate</i>
<i>Peterson</i>		X					
<i>Maudsley</i>		X					
<i>Boylan</i>		X					
<i>Brody</i>		X					
<i>Lolla</i>		X					
<i>O'Shaughnessy</i>		X					
<i>Pashman</i>		X					
<i>Schwartz</i>							X
<i>Wissinger</i>		X					
<b>Total:</b>		8					1

*Robyn M. Hill* 2/27/02  
Robyn M. Hill  
Chief Counsel