

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 98-092

IN THE MATTER OF
STEVEN M. OLITSKY,
AN ATTORNEY AT LAW

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Decision

Argued: June 11, 1998

Decided: January 11, 1999

George J. Mazin appeared on behalf of the District VB Ethics Committee.

Paul W. Bergrin appeared on behalf of respondent.

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

This matter was before the Board based on a recommendation for discipline filed by the District VB Ethics Committee ("DEC"). Two separate complaints were filed against respondent. One complaint charged him with violations of RPC 1.1(a) (gross neglect), RPC 1.3 (lack of diligence), RPC 1.4(a) (failure to communicate) and RPC 1.1(b) (pattern of neglect). The second complaint also charged respondent with violations of RPC 1.1(a), RPC 1.1(b), RPC 1.3 and RPC 1.4(a), in addition to RPC 1.5(b) (failure to set forth the basis of

the fee arrangement in writing), RPC 1.16(a)(3) (continuing to represent a client after being discharged) and RPC 1.16(d) (upon termination of representation, failure to surrender property to which the client is entitled and failure to refund advance payment of fee that has not been earned).¹ Both of these matters involved bankruptcy cases. In the first case, respondent failed to timely file a bankruptcy petition; in the second case, he failed to file the petition.

Respondent was admitted to the New Jersey bar in 1976. At the relevant times, he maintained an office in Irvington, New Jersey.

Respondent is no stranger to the disciplinary system. In November 1993 he received a private reprimand for failure to communicate with a client and failure to prepare a written retainer agreement. On November 27, 1996 he received an admonition for failure to prepare a retainer agreement and to inform his client that his law firm would not initiate the matter unless full payment of the fee was made. In June 1997 he was suspended for three months for recordkeeping deficiencies, which included the commingling of personal and client funds in his trust account to avoid an IRS levy on his personal funds. In re Olitsky, 149 N.J. 27 (1997). After this three-month suspension expired on August 16, 1997, respondent applied for reinstatement to the practice of law. The Court denied the petition, pending the resolution of all ethics grievances and complaints against him. In June 1998, the Court imposed a three-

¹ This complaint charged respondent with violations in two matters. The first matter was heard at an earlier DEC hearing and considered by the Board with other matters under Docket No. DRB 97-457.

month suspension against respondent, consecutive to his previous suspension. That matter, involving four separate cases, included violations of gross neglect, lack of diligence, failure to explain a matter to the extent reasonably necessary to permit the client to make an informed decision regarding the representation and failure to communicate and to provide his clients with a written fee agreement in three matters. The fourth matter was dismissed.

**1. The Annie Hines Matter
District Docket No. VB-93-75E**

Annie Hines met with respondent on November 6, 1990 to have a bankruptcy petition filed in her behalf. Respondent orally quoted a fee of \$600 and filing costs of \$120. Hines paid respondent in two installments: \$220 on November 6, 1990 and \$500 on November 29, 1990. Hines also gave respondent copies of her bills and a list of creditors. At some unknown point, respondent prepared the bankruptcy petition. Hines met with him to review and execute the petition.

Thereafter, Hines had no further contact with respondent. She continued to receive telephone calls from her creditors and to receive "past-due" notices. She, therefore, attempted to reach respondent at his office, at which time she was told that respondent was no longer at the firm of Abramowitz and Olitsky.

By chance, sometime in 1993 Hines found respondent's new office location and called him to make an appointment. Afterwards, by letter dated April 1, 1993 Hines complained to respondent that her creditors were still calling her. She also requested the docket number

or any other information relating to her case. Hines made an appointment to meet with respondent at his office, at which time he informed her that he would be filing the bankruptcy petition. That meeting apparently occurred sometime after a December 4, 1993 memorandum to Hines from respondent, requesting that she make an appointment to review and sign the petition. Because the information that Hines had initially given respondent was outdated, respondent had to prepare a new bankruptcy petition. The petition was prepared on the wrong form, however, requiring the preparation of yet a third petition.

The bankruptcy petition was finally filed on February 18, 1994, more than three years after respondent's initial meeting with Hines.

At some point respondent sent Hines a notice of hearing. According to Hines, respondent told her that he would meet her in court. However, respondent failed to appear. The court heard the case nevertheless. Hines' debts were discharged on July 13, 1994. By letter of July 26, 1994 respondent notified her of this action. Respondent justified his failure to appear by saying that he must have been "tied up" in another court and that he probably tried to reach the bankruptcy court to advise it of his inability to appear.

Respondent admitted that he "messed up" Hines' case, but claimed that it was not intentional. He blamed his troubles on his inadequate office procedures. Respondent admitted that his filing system was poor. He explained that generally it would take him six months from the time he had been paid in full to draft a bankruptcy petition. According to respondent, he ordinarily waited until he had several petitions ready — four or five — to file with the bankruptcy court. He conceded that he did not advise his clients at the outset that

that was his practice.

Respondent testified that, in this case, the petition had been inadvertently placed in a filing cabinet; because he had no diary or calendar system to remind him of dates or deadlines, he did not recall that the matter was still pending. Respondent also testified that, after Hines had retained him, in May 1992, the dissolution of his law practice was unpleasant. Respondent claimed that he tried to send his clients announcements of his new location, but was unable to obtain the names of all of his clients. Respondent added that, because he assumed that the Hines file was closed, he stored it with other closed files in his basement. According to respondent, there were approximately seven other cases in the same situation. Respondent maintained that he was not aware that the cases had “fallen through the cracks” until the clients contacted him.

2. The Leslie Hunter Matter **District Docket No. VB-96-10E**

Leslie Hunter first met with respondent in 1991 but, because of financial difficulties, did not retain him until 1992. Hunter did not receive a written retainer agreement, but was quoted a fee of \$600 and filing costs of \$120. Hunter paid respondent in installments. She understood that respondent would not file a bankruptcy petition until he had been paid in full.

Hunter gave respondent all of her bills in April 1992 and began her installment payments on April 18, 1992. Hunter made seven payments to respondent, the last of which was in February 1993. At that point Hunter had overpaid respondent by \$20. From February

1993 to June 1995 respondent took no action to file Hunter's bankruptcy petition. Several months after Hunter made the final payment, she called respondent on several occasions to determine the status of her case. Respondent called Hunter back only twice to schedule appointments to discuss her case. On both occasions respondent was not in the office for the scheduled appointment. The first time Hunter was told that respondent was in court; the second time respondent was apparently on vacation.

After several additional unanswered telephone calls, Hunter wrote to respondent on April 16, 1995, asking him for the docket number of her case. When she received no reply, she tried to telephone respondent, to no avail. Hunter then sent respondent a letter on May 13, 1995. Again, she received no reply. Hunter's letter stated that she had been informed by the court that respondent had not filed her bankruptcy petition. Hunter, therefore, requested that respondent return all monies that she had paid to him as well as all of her original documents. She told respondent that, if he did not comply with her request within two weeks, she would report the matter to the disciplinary authorities.

When respondent did not reply, Hunter again wrote to respondent on June 22, 1995, requesting that he contact her. Respondent wrote to Hunter on June 30, 1995, claiming that he had completed her bankruptcy petition and that she should make an appointment to review her file. Respondent had not met with Hunter since 1992; Hunter, thus, believed that the information she had given respondent was outdated. When Hunter called to make an appointment with respondent to discuss this concern, she again received no reply.

On August 24, 1995 Hunter wrote to respondent to terminate his services and to request that he return all original documents and monies paid. Hunter also enclosed a copy of an ethics grievance that she planned to file if respondent did not return her money within two days. On August 28, 1995, respondent replied to Hunter's letter:

I bring to your attention, on June 30, 1995, I forwarded a letter to you after speaking to you on the telephone advising you that your petition was ready for signing. I would appreciate your contacting me relative to the position you wish to take.

[Exhibit Hunter P-8]

Hunter then retained a new attorney, who wrote to respondent on September 15, 1995. The attorney informed respondent that she had been retained to represent Hunter in the bankruptcy matter. She requested that respondent return Hunter's file. Respondent, however, failed to contact the attorney, failed to return the file and failed to return Hunter's retainer. Hunter's new attorney, nevertheless, immediately began working on the bankruptcy petition.

In his defense, respondent testified that he did not do any work on the Hunter matter from 1993 to 1995 because he was not aware that Hunter had paid his fee in full; he claimed that his secretary had not informed him of that fact. Respondent also blamed his inattention to the matter on personal problems, including the dissolution of his partnership and the termination of a personal relationship in the fall of 1994. According to respondent, the personal break-up affected him emotionally and eventually led to municipal court litigation, where he was accused of stalking and violating a restraining order. Respondent explained

that he was being treated by a psychiatrist and that, at the end of 1996, he was diagnosed with obsessive/compulsive disorder. According to respondent, he was dysfunctional from September 1994 through December 1995, a circumstance that affected his law practice, the management of his practice and his responsiveness to clients. Respondent claimed that his treating psychiatrist had provided him with a letter indicating that he was now fit to practice law. This letter was not, however, offered into evidence at the DEC hearing. Respondent also noted that he is under medication and that he meets with his psychiatrist on at least a monthly basis. Nothing was offered at the DEC hearing to support respondent's assertions.

The DEC found violations of RPC 1.1(a), RPC 1.3 and 1.4(a) in the Hines and Hunter matters. The DEC blamed respondent's misconduct in Hines on his inadequate system for tracking day-to-day responsibilities and on the lack of organization in the relocation of his law practice. The DEC found that respondent's conduct in Hunter differed from his conduct in Hines, in that he neglected to take any action, despite Hunter's attempts to remind him of his responsibilities in the case. The DEC found that respondent's failure to withdraw from the Hunter matter after he had been discharged and his failure to timely turn over his client's file violated RPC 1.16(a)(3).

The DEC declined to find a violation of RPC 1.1(b), concluding that the evidence was insufficient to support a finding of a pattern of neglect. Similarly, the DEC did not find a violation of RPC 1.5 in Hunter, reasoning that respondent's failure to prepare a written retainer agreement was merely a technical violation of the rules, because respondent orally made clear the fee arrangement to his client.

The DEC recommended the imposition of a six-month suspension. The DEC also recommended that, upon restoration, respondent practice under the supervision of a proctor for a six-month period and that he attend an ICLE course titled "Managing Life as a Lawyer." Finally the DEC recommended that respondent be subject to periodic psychological testing and conferences with an OAE supervisor.

The DEC did not find sufficient evidence that respondent suffered from a loss of competency, comprehension or will of the magnitude that could excuse him from his ethics violations in these matters, citing In re Roth, 140 N.J. 430 (1995).

* * *

Following a de novo review of the record, the Board is satisfied that the DEC's finding of unethical conduct is supported by clear and convincing evidence.

Respondent's conduct in both the Hunter and Hines matters constituted gross neglect. In Hunter, respondent never filed a bankruptcy petition for his client. In Hines, although respondent eventually filed a bankruptcy petition, it took him three and one-half years to do so. Moreover, if Hines had not found respondent's new office location, respondent would not have taken any action in her behalf, as he was unaware that her case was still pending. After Hines contacted respondent in April 1993, it still took him ten months to prepare and file a new petition. By his own admission, respondent's shoddy office practices led to his problems in this matter; his failure to take prompt action to resolve the matter.

The evidence of failure to communicate is not clear in Hines. The record does not provide the same recitation of unanswered telephone calls and letters as in Hunter. In fact, the record shows that respondent had at least some communications with Hines; she was notified of the bankruptcy hearing and also of the discharge of her debts. The Board, therefore, declined to find a violation of RPC 1.4(a) in Hines.

In Hunter, it is undeniable that respondent ignored his client's numerous telephone calls and letters, in violation of RPC 1.4(a). It is also clear that respondent's failure to provide a written fee agreement to Hunter violated RPC 1.5(b). The fact that respondent orally communicated the fee information to her limits the misconduct to a technical violation. Moreover, after the initial letter from Hunter requesting the return of the fee and documents, respondent continued, or at least claimed to have continued, to prepare a petition in her behalf. Finally, respondent failed to refund the unearned retainer to Hunter and to return her file, despite several requests from Hunter and her new attorney. His conduct was, thus, a violation of RPC 1.16(a)(3) and RPC 1.16(d).

The DEC did not find a violation of RPC 1.1(b) (pattern of neglect). The Hunter matter was supposed to be reviewed by the Board in conjunction with the matters heard in February 1998. For some unknown reason, Hunter was not forwarded to the Board with these earlier matters. The Board found, however, that respondent's conduct in these two matters, coupled with the earlier Olitsky matters, establishes a pattern of neglect, in violation of RPC 1.1(b).

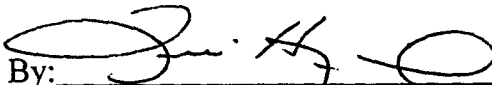
In sum, respondent's misconduct included violations of RPC 1.1(a) (gross neglect) in both matters, RPC 1.4(a) (failure to communicate) in one matter, RPC 1.5(b) (failure to give client written fee agreement) in one matter, RPC 1.16(a)(3) (continuing to represent client after discharged) and 1.16(d) (failure to surrender client's property upon termination of representation) in one matter and RPC 1.1(b) (pattern of neglect). The level of discipline for misconduct of this nature varies depending on a number of factors, including the degree of misconduct, the number of matters involved and the attorney's prior history of discipline. See In re Brantley, 139 N.J. 465 (1995) (three-month suspension for lack of diligence in two matters, failure to communicate in one of those matters, failure to cooperate with the DEC in three matters and pattern of neglect; prior one-year suspension and three private reprimands); In re Martin, 122 N.J. 198 (1991) (three-month suspension for misconduct in four matters, including failure to pursue an appeal, failure to communicate with clients in three matters and failure to cooperate with the DEC investigation; prior six-month suspension); In re Ortopan, 147 N.J. 330 (1997) (six-month suspension for lack of diligence, failure to communicate, failure to turn over client file and failure to cooperate with disciplinary authorities; attorney had both a prior three-month suspension and temporary suspension for failure to pay a fee arbitration refund determination); and In re Frost, 152 N.J. 25 (1997) (six-month suspension for gross neglect in three matters, lack of diligence in three matters and failure to communicate in two matters; the Court ordered respondent to remain suspended until pending ethics matters were concluded; attorney had two prior private reprimands and a three-month suspension).

The Board has unanimously determined to impose a six-month suspension, retroactive to November 16, 1997, the date of the expiration of respondent's three-month suspension in the prior disciplinary matter. One member did not participate. The Board is mindful of the Court's earlier order, directing that respondent not be reinstated until the resolution of all ethics matters currently before the DEC. As of the date of the Board's hearing in this matter, five matters were pending at the DEC level.

The Board further determined, that upon reinstatement, respondent is to practice under the supervision of a proctor, approved by the Office of Attorney Ethics, for a three-year period.

Respondent is required to reimburse the Disciplinary Oversight Committee for administrative costs prior to reinstatement.

Dated: 1/11/99

By: 
LEE M. HYMERLING
Chair
Disciplinary Review Board

SUPREME COURT OF NEW JERSEY

**DISCIPLINARY REVIEW BOARD
VOTING RECORD**

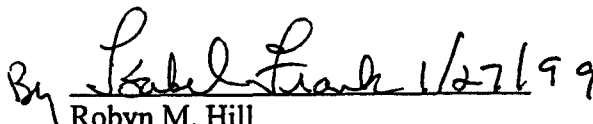
**In the Matter of Steven M. Olitsky
Docket No. DRB 98-092**

Argued: June 11, 1998

Decided: January 11, 1999

Disposition: Six-Month Suspension

Members	Disbar	Six-Month Suspension	Reprimand	Admonition	Dismiss	Disqualified	Did not Participate
Hyerling		x					
Zazzali							x
Brody		x					
Cole		x					
Lolla		x					
Maudsley		x					
Peterson		x					
Schwartz		x					
Thompson		x					
Total:		8					1

By  1/27/99
Robyn M. Hill
Chief Counsel