

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 03-359

IN THE MATTER OF :
ARTHUR S. ALEXION :
AN ATTORNEY AT LAW :

Decision

Argued: January 29, 2004

Decided: March 3, 2004

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

Respondent waived appearance for oral argument.

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

This matter was before us based on a motion for reciprocal discipline filed by the Office of Attorney Ethics ("OAE") pursuant to R.1:20-14(a), following respondent's resignation from the Pennsylvania bar and consequent disbarment on consent.¹

Respondent was admitted to the New Jersey bar in 1985 and to the Pennsylvania bar in 1982. He has no history of discipline in New Jersey, although he received two informal admonitions and a private reprimand in Pennsylvania. He has been on the New Jersey Supreme

¹ Under Pa.R.D.E. Rule 215, if an attorney submits a resignation while allegations of unethical conduct are pending, the Supreme Court shall issue an order for disbarment on consent.

Court's list of ineligible attorneys since September 20, 1999, for failure to pay the annual attorney assessment to the New Jersey Lawyers' Fund for Client Protection.

By letters dated July 9, 2002, October 21, 2002, October 29, 2002, and February 19, 2003, Pennsylvania disciplinary authorities notified respondent of four grievances filed against him. The facts that gave rise to the grievances are as follows:

The Stapleton Matter

In April 2001, respondent was retained by Walter Stapleton to represent his son and his son's fiancée in connection with their claim arising from a store's failure to deliver a computer. Stapleton paid respondent a \$1,500 retainer, consisting of a \$1,200 flat legal fee and \$300 in filing fees.

From May 11 through November 2, 2001, Stapleton made numerous attempts to obtain a detailed statement of the work performed by respondent as well as information about the status of the case. Respondent failed to reply to Stapleton's telephone calls, letters, and e-mails. Several of Stapleton's communications expressed his dissatisfaction with respondent's inaction. Ultimately, Stapleton terminated respondent's representation. He requested the return of the file and of the \$1,500 retainer. Respondent ignored Stapleton's requests.

On November 2, 2001, respondent sent an e-mail to Stapleton apologizing for the delay and promising to contact him that afternoon. He did not, however.

According to Pennsylvania disciplinary authorities, from November 2, 2001 until July 9, 2002 (the date of their first letter to respondent), respondent exhibited lack of competence, lack of diligence, failure to communicate with his client, failure to account for the expenditure of the \$1,500 retainer, and failure to take reasonable steps to protect the client's interests upon

termination of the representation, all in violation of Pennsylvania RPC 1.1, RPC 1.3, RPC 1.4(a), RPC 1.15(b), RPC 1.15(c), and RPC 1.16(d).²

The Trust Account Matters

On August 2, 2001, respondent created a \$328.62 deficiency in his trust account, when he issued a \$500 trust account check. He later failed to reply to the Pennsylvania Lawyers' Fund for Client Security's requests for a documented explanation about the overdraft.

In addition, on or about October 3, 2002, another \$500 check drawn against respondent's trust account caused a \$113.62 overdraft.

According to the grievances, respondent "commingled, converted, misappropriated, misapplied and/or misused" approximately \$1,000 in trust funds, in violation of Pennsylvania RPC 1.15(a), RPC 1.15(b), RPC 8.4(c), and RPC 8.4(d).

The Miyahara Associates Matter

In or about 1997, respondent hired R. Reiko Miyahara Associates, Inc. ("Miyahara Associates") as experts in a civil matter.

On or about November 28, 1997, Miyahara Associates forwarded him an invoice for \$2,404.53, representing their fee for the written report and testimony provided in the case. Respondent did not make the requested payment. On numerous occasions between January 1998 and December 1999, Miyahara Associates contacted respondent's office and sent him follow-up invoices, to no avail.

² The Pennsylvania and the New Jersey RPCs are either similar or identical.

On or about January 2000, respondent sent a facsimile to Miyahara Associates, stating that his client had prevailed in the suit and that he was ready to make distribution of the judgment proceeds. Even though respondent had received several invoices starting in 1997, he asked Miyahara Associates to send him a statement of the account.

On January 13, 2000, Miyahara Associates sent another invoice to respondent, but their fee remained unpaid. From January 2000 through September 2001, Miyahara Associates' numerous efforts to collect the fee were unavailing.

On or about October 12, 2001, respondent sent a letter to Miyahara Associates, enclosing a \$500 check and promising to make minimum monthly payments in the amount of \$175, as well as a final payment of \$150 in September 2002. Respondent assured Miyahara Associates that the payments would be made promptly. On or about November 23, 2001, Miyahara Associates accepted respondent's proposal.

As of February 19, 2003, the date of Pennsylvania disciplinary authorities' letter to respondent, the entire debt remained outstanding.

According to Pennsylvania disciplinary authorities, respondent's conduct violated Pennsylvania RPC 1.15(a), RPC 1.15(b), RPC 1.15(d),³ and RPC 8.4(c).

On April 3, 2003, respondent resigned from the Pennsylvania bar, conceding that (1) the facts alleged in the grievances were true, (2) an additional investigation into allegations that he practiced law while on inactive status would prove them to be true, and (3) he failed to comply with a private reprimand's condition for the return of a client's file. Respondent acknowledged that he could not successfully defend himself against the charges of professional misconduct set

³ The basis for the charge of recordkeeping violations is unclear.

forth in the grievances, as well as “additional charges which may be brought.” The record is silent about the extent and nature of these additional charges.

On June 11, 2003, the Supreme Court of Pennsylvania accepted respondent’s resignation and ordered his disbarment on consent.

The OAE recommended that respondent receive a reciprocal five-year suspension in New Jersey – the equivalent of Pennsylvania disbarment – retroactive to June 11, 2003, the date of the Pennsylvania disbarment. The OAE also recommended that respondent not be reinstated in New Jersey until he is reinstated in Pennsylvania.

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

The record does not reveal any conditions that would fall within the ambit of paragraphs (A) through (D). Paragraph (E), however, is applicable because a five-year suspension is not a

level of discipline contemplated by the New Jersey rules.⁴ In any event, we believe that a five-year suspension is excessive discipline for respondent's conduct.

The four grievances against respondent established the following ethics offenses: in the Stapleton matter, gross neglect, lack of diligence, failure to communicate with the client, failure to account for the \$1,500 retainer, failure to return the unearned portion of the retainer, and failure to return the file to the client; in the trust account matters, two overdrafts; and in the Miyahara Associates matter, failure to set aside the expert's fee from the judgment proceeds, failure to promptly deliver funds to which the expert was entitled, and misrepresentation to the expert that monthly payments toward the fee would be made punctually. In addition, respondent admitted that he practiced law in Pennsylvania while on the inactive list. As to respondent's statement that he could not "successfully defend himself against additional charges which may be brought," since there is no information in the record about the nature of such charges, they should not be included in the assessment of the appropriate measure of discipline for respondent's overall conduct.

Discipline ranging from an admonition to a reprimand is generally appropriate when an attorney is found guilty of gross neglect, lack of diligence, failure to communicate with the client, and failure to promptly disburse trust funds. In the Matter of Angela C.W. Belfon, DRB 00-157 (January 11, 2001) (admonition imposed on attorney found guilty of gross neglect, lack of diligence, failure to communicate with the client, failure to expedite litigation, and failure to

⁴ At times, the Court will determine that a temporary suspension in New Jersey or a suspension served in another jurisdiction is sufficient final discipline for a respondent. The outcome in such matters is informally known as "time served." It is possible, thus, that a respondent will end up serving a five-year suspension in some situations. Such suspensions are not to be confused with those that have a fixed duration. In New Jersey, "[a]bsent special circumstances, a suspension for a term shall be for a period that is no less than three months and no more than three years." R.1:20-15A(a)(3). Similarly, the new category of discipline – indeterminate suspension – does not equate to a five-year suspension. R.1:20-15A(a)(2) provides that an indeterminate suspension precludes a respondent from seeking reinstatement for a minimum of five years.

promptly turn over funds to which the client was entitled); In the Matter of William F. Aranguren, DRB 97-101 (June 30, 1997) (admonition for attorney who failed to take appropriate steps to prosecute an action, neglected to keep abreast of its status after it was listed for dismissal for lack of prosecution, failed to follow up on the client's request to determine the status of the case, failed to take action to have the matter reinstated, and took insufficient steps to return the file to the client; in another matter, the attorney failed to give the client a breakdown of the expenses, fees and other deductions from the proceeds of the judgment, and took four years to finalize the distribution of the proceeds to the client); In re Dare, 174 N.J. 369 (2002) (reprimand for misconduct in three matters, including gross neglect, lack of diligence, failure to communicate with clients, and failure to return a client's funds); In re Armorer, 153 N.J. 358 (1998) (reprimand for misconduct in three matters, including gross neglect, lack of diligence, failure to communicate with clients, failure to return files, and failure to return an unearned retainer; in one of the matters, the lack of diligence consisted of failure to pay a doctor for one year after the case was settled).

A reprimand might still result if, in addition to displaying the above conduct, an attorney practices law while ineligible. In re Balint, 170 N.J. 244 (2001) (reprimand for mishandling of four matters; the attorney was found guilty of gross neglect, lack of diligence, failure to communicate with an estate beneficiary, and violation of an escrow agreement; the attorney also practiced law while ineligible for failure to pay the annual assessment to the New Jersey Lawyers' Fund for Client Protection).

If the misconduct encompasses numerous matters or the attorney has a disciplinary record, terms of suspension are imposed. In re Hintze, 171 N.J. 84 (2002) (three-month suspension for attorney guilty of misconduct in two matters, including gross neglect, lack of

diligence, and failure to communicate with the clients; in one of the matters, the attorney failed to return to the client \$900 held in escrow; the attorney had received a reprimand for gross neglect, lack of diligence, failure to communicate with the client, and failure to cooperate with disciplinary authorities); In re Kubulak, 172 N.J. 318 (2002) (attorney suspended for three months for grossly neglecting a collection matter, failing to communicate with the client, and failing to cooperate with disciplinary authorities; the attorney had received two three-month suspensions); In re Peluso, 156 N.J. 545 (1999) (three-month suspension for misconduct in six client matters, including gross neglect, lack of diligence, failure to communicate with clients, failure to explain matters to the extent necessary to permit clients to make an informed decision about the representation, failure to abide by clients' decision concerning the representation, failure to return the file upon termination of the representation, and pattern of neglect; the attorney was also guilty of recordkeeping violations, including two trust account overdrafts); In re Gavin, 170 N.J. 597 (2002) (six-month suspension for gross neglect of a client's defense to a lawsuit – thereby causing the entry of a default judgment against the client and the execution of the judgment – failure to communicate with the client, failure to turn over the file to new counsel, and failure to cooperate with ethics authorities; the attorney had been reprimanded twice); In re Marra, 170 N.J. 410 (2002) (six-month suspension for gross neglect, failure to communicate with the client, failure to return the file upon termination of the representation, and failure to cooperate with disciplinary authorities; the attorney's disciplinary record included a private reprimand, a public reprimand, and a three-month suspension); In re King, 171 N.J. 79 (2002) (one-year suspension for gross neglect of a divorce matter, failure to return an unearned retainer, failure to return the file upon termination of the representation, and egregious failure to cooperate with disciplinary authorities; the attorney's ethics history included a temporary

suspension for failure to return a \$7,500 unearned retainer to the client, a reprimand, and a three-month suspension); In re Lester, 165 N.J. 510 (2000) (one-year suspension for attorney who grossly neglected a matter for eight years, failed to surrender the file to new counsel, and failed to reply to the OAE's request for information about the matter; prior disciplinary history included a private reprimand, two public reprimands, and a six-month suspension).

Here, the OAE is seeking a five-year suspension, the equivalent of disbarment in Pennsylvania. In the cases cited by the OAE, however, In re Turner, 120 N.J. 706 (1990), In re Gaffney, 146 N.J. 522 (1996), In re Beck, 143 N.J. 135 (1996), the attorneys received three-year suspensions for much more egregious ethics violations: Turner's pattern of misconduct encompassed sixteen matters and caused the New Jersey Lawyers' Fund for Client Protection to pay thousands of dollars to the clients victimized by his actions; Gaffney mishandled eleven cases and had an extensive disciplinary history: a public reprimand, a temporary suspension – based on his abrupt abandonment of his law practice and a preliminary finding of gross neglect in numerous client matters – and a suspension for two years and six months for misconduct in a number of matters (one of our decisions noted that Gaffney had “engaged in a spree of unethical conduct since his 1989 admission to the bar”); and, finally, Beck's three-year suspension was based on multiple violations in eleven cases and a lengthy disciplinary record that included two private reprimands, a public reprimand, two temporary suspensions, and a three-month suspension. In fact, the conduct in the above cases was so egregious that some of our members (two in Gaffney and three in Beck) voted for disbarment.⁵

Here, respondent's ethics history – a private reprimand and two informal admonitions – is not as significant as Gaffney's and Beck's. Similarly, his conduct was not of the same nature

⁵ Turner was later disbarred for knowing misappropriation.


and extent of Turner's, Gaffney's, and Beck's. It was confined to one client matter (one other matter involved failure to pay an expert's fee, one involved practicing law while ineligible, and two involved recordkeeping violations).

In light of the above-cited precedent, we determine that a six-month suspension, rather than the five-year suspension urged by the OAE, is sufficient discipline for respondent's misconduct in Pennsylvania. We believe that the application of an inflexible formula that calls for an identical term of suspension imposed in another jurisdiction ignores all the factors and circumstances considered in the assessment of the appropriate quantum of discipline in each case. We also determine that respondent should not be reinstated in New Jersey until he is reinstated in Pennsylvania.

Two members did not participate .

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
Chief Counsel

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

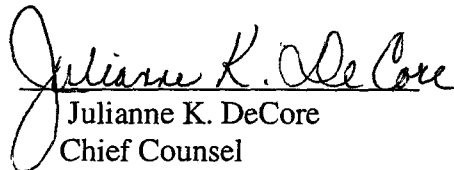
In the Matter of Arthur S. Alexion
Docket No. DRB 03-359

Argued: January 29, 2004

Decided: March 3, 2004

Disposition: Six-month suspension

<i>Members</i>	<i>Disbar</i>	<i>Six-month Suspension</i>	<i>Reprimand</i>	<i>Admonition</i>	<i>Dismiss</i>	<i>Disqualified</i>	<i>Did not participate</i>
<i>Maudsley</i>		X					
<i>O'Shaughnessy</i>							X
<i>Boylan</i>		X					
<i>Holmes</i>		X					
<i>Lolla</i>							X
<i>Pashman</i>		X					
<i>Schwartz</i>		X					
<i>Stanton</i>		X					
<i>Wissinger</i>		X					
Total:		7					2


 Julianne K. DeCore
 Chief Counsel