SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 02-047

IN THE MATTER OF :
:
MARTIN C. LATINSKY :
:
AN ATTORNEY AT LAW :

Decision

Argued: April 18, 2002

Decided: June 24, 2002

Lee A. Gronikowski 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 based on a recommendation for discipline filed by the District IIB Ethics Committee ("DEC"). The three-count complaint charged respondent with practicing law while ineligible for failure to pay the annual assessment to the New Jersey Lawyers' Fund for Client Protection ("CPF"), in violation of RPC 5.5(a) and R.1:28-2; making a false statement of material fact to disciplinary authorities, in violation of RPC 8.1(a); and recordkeeping deficiencies, in violation of R.1:21-6 and RPC 1.15(d). Respondent admitted that he had practiced law while ineligible and that his

recordkeeping was deficient, but offered testimony in explanation of those violations. Respondent denied having offered false information to the DEC.

Respondent was admitted to the New Jersey bar in 1983. He formerly practiced in Tenafly, Bergen County. He testified below that he was no longer practicing law and that, as of the date of the DEC hearing, June 15, 2001, he was employed as a paralegal.

In November 1999, respondent was admonished for misconduct in three matters. In all three, respondent failed to communicate with his clients. In addition, in one of the matters, although he prepared a verified complaint and had his client sign it, he never filed it because he determined that the case was not meritorious. He never informed his client of that determination. In another matter, he did not inform his clients that his efforts to stay a sheriff's sale had been rejected by the sheriff and did not return his client's telephone calls at a time when she was anxiously seeking information about the case. In the third matter, the client's case was dismissed because of respondent's failure to attend an arbitration proceeding. He then did not file a motion to reinstate the complaint until nine months after an ethics grievance was filed against him. He also failed to serve answers to interrogatories in the case. In the Matter of Martin C. Latinsky, Docket No. DRB 99-291 (November 29, 1999).

On April 1, 2002, the Court reprimanded respondent for taking a fee from a preference settlement without the prior approval of the bankruptcy court, failing to keep his client informed about his bankruptcy case and failing to cooperate with the district ethics committee's investigation of the grievance. In re Latinsky, 171 N.J. 403 (2002). Also on that date, the Court determined to suspend respondent for three months for

misconduct in two matters.[1] In one matter, respondent demonstrated gross neglect, lack of diligence, failure to communicate the basis of his fee in writing, failure to expedite litigation and dishonesty.[2] He also charged an unreasonable fee. In both matters, he failed to communicate with his clients and failed to cooperate with disciplinary authorities. In re Latinsky, 171 N.J. 402 (2002).

This matter began in October 1997 as a grievance docketed by the District IIA Ethics Committee. The grievants, Maria Regalado and Steven Gutierrez, are mother and son, who, along with Luis Figueroa, were involved in the purchase of a restaurant.[3] The transaction ultimately fell through. The grievants alleged that respondent had misappropriated $9,000 that had been deposited into his trust account toward the purchase price of the restaurant. The DEC investigator, Yvonne Smith Segars, found discrepancies with regard to the money that had changed hands and recommended an examination of respondent's financial records. Thereafter, the Office of Attorney Ethics ("OAE") took over the investigation. While grievant's claim was dismissed following investigation, respondent was charged with 1) practicing law while ineligible, 2) giving false material information to the DEC investigator and 3) failing to properly maintain his trust account records.

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[1] The matters were originally before us as defaults. Respondent did not file a motion to vacate the defaults. We determined to suspend him for three months. After respondent filed a petition for review, the Court remanded the matters to us to permit him to file a motion to vacate the defaults. We denied respondent's motion and reiterated our prior determination.

[2] The dishonesty finding stemmed from respondent's lack of intention to complete the work for which he had been retained.

[3] Figueroa alone signed the retainer agreement with respondent.

Count One (Practicing Law While Ineligible)

On September 10, 1999 the Court declared respondent ineligible to practice law for failure to pay the annual assessment to the CPF. Respondent remained ineligible until February 2, 2000, when he paid the assessment. From January through December 1999 respondent worked for an attorney who had been appointed as a policyholder representative pro hac vice, in a class action lawsuit captioned In re The Prudential Insurance Company of America Sales Practices Litigation. Respondent obtained the position through a placement agency.

Respondent contended that he had been unaware that he was ineligible to practice law. He testified that he did not have the funds to pay the CPF assessment when he received the payment notice. He claimed that, because his father was diagnosed with cancer at that time, his attentions were directed to his family and he, therefore, overlooked the payment of the assessment. Respondent testified that he was not holding himself out to the public as an attorney during his work on the Prudential case.

Count Two (Misrepresentation to the DEC)

As noted above, this matter was originally investigated by the District IIA Ethics Committee as a potential misappropriation case. By letter dated December 18, 1997, the DEC investigator, Segars, asked respondent to reply to the grievance. The subsequent formal complaint alleged that respondent's reply to the grievance, an undated letter bearing a "fax" date of May 28, 1998 contained misrepresentations. Specifically, respondent stated in his letter that he had no record of taking any money from Figueroa

and that there had been no formal retainer agreement in the matter. Exhibit C-6. The OAE offered into evidence another letter from respondent to Segars, this one dated February 21, 1998. Exhibit C-9. In this second letter, respondent detailed his representation of Figueroa and his involvement in the matter. The OAE's investigative auditor, G. Nicholas Hall, acknowledged that C-9 was "forthright and informative."

In addition to the above letters, the OAE offered into evidence the retainer agreement between respondent and Figueroa. Exhibit C-7. The OAE also offered a letter from respondent to the grievants' subsequent attorney, dated October 14, 1997, in which respondent detailed the distribution of the funds he had been holding. Exhibit C-8. That letter was written no more than seven months prior to respondent's undated letter to Segars, in which he denied having taken funds from Figueroa.

The OAE argued that respondent made misrepresentations to Segars in his reply to the grievance (exhibit C-6). Hall admitted that, although he had no firsthand knowledge of the order in which the letters had been sent to Segars, he made a judgment call based on "the essence of the letters." In addition, Hall testified that, during a May 21, 1998 telephone conversation, respondent admitted that the letter marked C-6 had been the initial letter to Segars.

Respondent testified that the letter dated February 21, 1998, exhibit C-9, was sent to Segars as his reply to the grievance. He pointed to the "fax" date of May 28, 1998 on exhibit C-6 as support for his contention that exhibit C-9 preceded exhibit C-6. Respondent testified further that exhibit C-6 was sent in reply to a phone call from Segars. Respondent stated that he probably did not check his file before writing exhibit

C-6 and did not recall the existence of the retainer agreement. Respondent explained that he had confused the client with someone else and that his misstatements had been a "mistake."

Count Three (Recordkeeping Violations)

An audit of respondent's attorney books and records revealed the following recordkeeping deficiencies:

1) A trust receipts book was not maintained.
2) A trust disbursements book was not maintained.
3) A running cash balance was not kept in the trust account checkbook.
4) Clients' trust ledgers were not fully descriptive.
5) A separate ledger was not maintained detailing attorney funds held for bank charges.
6) Inactive trust ledger balances remained in the trust account for extended periods of time.
7) A separate ledger sheet was not maintained for each trust client.
8) A schedule of client ledger accounts was not prepared and reconciled quarterly to the trust account bank statement.

Respondent admitted that his "records should have been in better order." He added that he had only one or two transactions per year through his trust account. The OAE confirmed that respondent had very little trust account activity.

By way of explanation, respondent testified that, during the time in question, he was under the care of a psychiatrist and had been taking "welbutrin" for his depression. He stopped taking his medication approximately five months before the hearing. He stated that "welbutrin" detrimentally affected his memory. He blamed the medication for his failure to remember the underlying matter, when he wrote the letter marked as exhibit

C-6. He did not produce any evidence or witnesses in support of his testimony about his condition.

At the time of the DEC hearing, respondent was not practicing law, but was working as a paralegal at a law firm. Respondent testified that he was not comfortable holding himself out to the public as an attorney. He added that he hopes to work as an attorney in the future, but recognizes that he cannot "handle the business aspects of being a lawyer" and believes that he will never practice on his own again. Respondent offered his withdrawal from the practice of law as a mitigating factor. He also pointed to the passage of time since his infractions.

In a letter dated March 28, 2002 the OAE urged us to impose discipline no greater than a reprimand.

* * *

As to count one, it was undisputed that respondent practiced law while ineligible. The DEC found that he violated RPC 5.5(a) and R.1:28-2, as charged in the complaint. With regard to count two, the DEC found that respondent had made a misrepresentation to Segars:

> In reviewing C-6 and C-9 for identification, it is clear that Mr. Latinsky misrepresented material facts to the investigator. Mr. Latinsky's explanation or testimony concerning the chronology of these letters was not credible. In C-9 for identification, Mr. Latinsky admits the representation and details in four pages concerning the representation. In the document that was marked as C-6 for identification, he denies the representation or ever having received any money involved in the subject matter of the ethics complaint against him.
>
> It does not appear logically possible that Mr. Latinsky could have sent then the February 21, 1998, letter that was marked as C-9 for

> identification before he sent the undated letter marked as C-6 for identification, because the letters are not consistent with each other.
>
> [Hearing panel report at 4]

The DEC concluded that respondent first sent exhibit C-6 and then sent exhibit C-9, without any reference to the earlier letter. The DEC could find no logical explanation for respondent's actions, other than an intent to mislead the DEC investigator. The DEC, therefore, found that respondent violated RPC 8.1(a).

As to count three, the complaint charged respondent with recordkeeping violations, which he admitted. The DEC found violations of RPC 1:21-6 and RPC 1.15(d).

The DEC stated that respondent appeared

> . . . somewhat embarrassed and apologetic concerning the events. With respect to certain issues such as the misrepresentation to the investigator, he appeared desperate and willing to say anything in order to extricate himself from the situation he had gotten into, even misrepresent the truth. The clear fact is that Mr. Latinsky was overwhelmed by his law practice and had no organization skills so that he could keep up with administrative responsibilities.
>
> [Hearing panel report at 5]

The DEC found no mitigating factors that would militate against the imposition of a reprimand.

* * *

Upon a de novo review of the record, we are satisfied that the DEC's conclusion that respondent's conduct was unethical is supported by clear and convincing evidence. We are unable to agree, however, with the DEC's finding that respondent made a misrepresentation to the DEC, in violation of RPC 8.1(a).

In count two, the DEC determined that exhibit C-6, in which respondent stated that he had no record of taking funds from Figueroa or having a retainer agreement, had been sent to the investigator before exhibit C-9, in an attempt to mislead the DEC investigator. Presumably, the misrepresentation was respondent's allusion to the DEC investigator that he never represented the grievants. Even if it is found that exhibit C-6 was respondent's first communication to the DEC, however, a review of that document does not lead to a clear result, i.e. that he denied the representation. An equally plausible reading is that respondent was informing the DEC that he represented the grievants, but that he had no record of the retainer agreement or of how much money he had received from them. Because we cannot conclude by clear and convincing evidence that respondent did not simply make a mistake, we dismissed the allegation of a violation of RPC 8.1(a). In light of our determination in that regard, we deemed it unnecessary to determine whether exhibit C-6 or exhibit C-9 was respondent's initial reply to the DEC investigator.

As to counts one and three, respondent admitted that he had practiced law while ineligible and that he had violated the recordkeeping rules. He blamed his derelictions on his inability to handle the business aspects of his law practice. Whatever the cause of

respondent's misconduct, there is no dispute that it took place. He, therefore, violated RPC 5.5(a), R.1:28-2, RPC 1.15(d) and R.1:21-6.

Misconduct of this sort, without more, ordinarily is met with either an admonition or a reprimand. See In the Matter of Joseph V. Capodici, Docket No. DRB 00-294 (November 21, 2000) (admonition imposed where the attorney took on the representation of a client when he had been declared ineligible to practice law for failure to pay the annual assessment to the CPF); In re Assad, 164 N.J. 615 (2000) (reprimand imposed for practicing law while ineligible and failing to maintain a bona fide office).

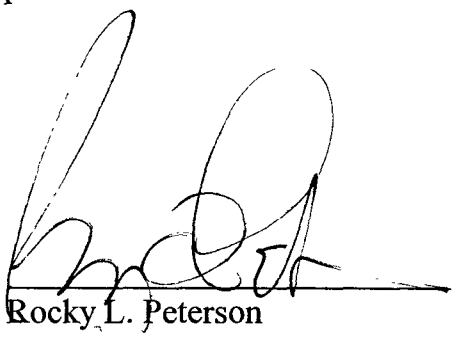
Respondent's disciplinary history constitutes a significant aggravating factor, however. We also noted that he received his admonition in November 1999. One month thereafter, December 1999, he again ran afoul of the disciplinary rules by practicing law while ineligible. Also, three of the four matters most recently before the Court bear 1999 district docket numbers, which means that respondent knew, at the time that he was ineligible to practice, that his conduct in other matters was under scrutiny. Therefore, he should have tread lightly.

As to mitigating factors, respondent testified that he suffered from depression during the time in question and had been treated with "welbutrin." He produced no evidence in support of his contentions, however. He also testified that his father's illness led him to overlook the payment to the CPF. Lastly, he stated that he is not currently engaged in the practice of law and has no current intention of resuming it. We have also given weight to the OAE's recommendation that a reprimand is sufficient discipline.

In light of the foregoing, we determined that for respondent's conduct in practicing law while ineligible and violating the recordkeeping rules a reprimand is appropriate discipline.

One member recused himself.

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



Rocky L. Peterson
Chair
Disciplinary Review Board

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Martin C. Latinsky
Docket No. DRB 02-047

Argued: April 18, 2002

Decided: June 24, 2002

Disposition: Reprimand

Members	*Disbar*	*Suspension*	*Reprimand*	*Admonition*	*Dismiss*	*Disqualified*	*Did not participate*
Peterson			X				
Maudsley			X				
Boylan						X	
Brody			X				
Lolla			X				
O'Shaughnessy			X				
Pashman			X				
Schwartz			X				
Wissinger			X				
Total:			8			1	

Robyn M. Hill 7/23/02
Robyn M. Hill
Chief Counsel