

SUPREME COURT OF NEW JERSEY  
Disciplinary Review Board  
Docket No. DRB 00-325

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IN THE MATTER OF  
ISADORE H. MAY  
AN ATTORNEY AT LAW

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Decision

Argued: December 21, 2000

Decided: May 29, 2001

Thomas J. McCormick appeared on behalf of the Office of Attorney Ethics.

Willis F. Flower appeared on behalf of respondent.

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

This matter was before us based on a stipulation signed by the Office of Attorney Ethics ("OAE") and respondent. Respondent stipulated that he violated *RPC* 1.7 (conflict of interest), *RPC* 8.4(a) (assisting another to violate the *Rules of Professional Conduct*), *RPC* 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation) and *RPC* 8.4(d) (conduct prejudicial to the administration of justice).

Respondent was admitted to the New Jersey bar in 1985. He has no disciplinary history.

At all relevant times, respondent maintained a law office in Ventnor, Atlantic County, New Jersey.

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On February 8, February 26, and July 19, 1999 the OAE conducted a demand audit of respondent's books and records. The audit was prompted by a previous random compliance audit of the books and records of respondent's brother-in-law, Norman I. Ross, Esq., which revealed unusual transactions between the two attorneys.

In late 1992 Ross, who had an office in Paterson, New Jersey, asked respondent to handle personal injury matters in which Ross saw conflict-of-interest situations for himself, such as automobile accident cases in which both the driver and the passenger could assert personal injury claims.

According to respondent, at the beginning of this business relationship with Ross he intended to meet with the referred clients and to work on the cases himself. As the cases were referred to him, however, he needed assistance, and sought advice, from Ross. Respondent contended that Ross was dismissive and arrogant toward him and began to handle the cases himself. In addition, the geographic distance between respondent's office in Ventnor, Atlantic County, and Passaic County where the clients resided, presented a problem for respondent.

Upon settlement of the first case referred to him by Ross, respondent deposited the settlement check in his attorney trust account. Following Ross' instructions, he kept one-third of the fee for himself and forwarded two checks to Ross: one payable to the client for the client's share of the settlement and one to Ross for two-thirds of the fee. Respondent followed this formula for the division of attorneys' fees in all of the remaining cases.

Respondent met only one or two of the clients that Ross had purportedly referred to him. When contacted by the OAE investigator, the clients denied knowing respondent, stating that Ross was their attorney. Respondent prepared only five percent of the complaints and releases; the remaining ninety-five percent were prepared at Ross' office on respondent's stationery. Ross or his wife/employee (respondent's sister) signed respondent's name to the complaints and civil case information statements filed with the court and to the jurats on the releases. Respondent forwarded to Ross his business account checks to pay the filing fees for the complaints. Although respondent's records disclosed that Ross referred at least sixty-nine cases to him, the OAE investigation identified only thirty-three cases. These cases were settled between January 1996 and July 1997 and generated \$74,476.17 in attorney fees, divided as follows: \$24,821.69 (plus \$5,007 in costs) to respondent and \$49,654.48 to Ross as respondent's "co-counsel".

Respondent claimed that, although as early as 1994 he had become uncomfortable with the referral arrangement, he did not begin to terminate the relationship with Ross until late 1996. The case list provided by respondent supported his claim, as it contained only one case with a 1997 docket number. The OAE notified Ross of the random compliance audit

in June 1997, after respondent had ceased participating in the referral scheme. Respondent informed the OAE investigators that his own law practice was improving in 1996 and demanded more of his attention.

As it turned out, on January 28, 2000 Ross consented to disbarment, admitting that he could not successfully defend himself against charges that he had knowingly misappropriated client trust funds in the cases that he had referred to respondent, as well as in other cases. The OAE investigation of Ross' activities revealed that, in many instances, after receiving from respondent the client's portion of the settlement funds, Ross deposited the check in a personal account and issued new checks to the clients from his business accounts, in lesser amounts. According to the OAE investigative report accompanying the stipulation, Ross may also have knowingly misappropriated client funds in other cases unrelated to the referral scheme.

The OAE investigation found no evidence tying respondent to Ross' knowing misappropriation of client trust funds.

Respondent conceded that, even though initially he did not enter into the referral arrangement with Ross with the intent to subvert the conflict of interest rule, the relationship soon developed into a pattern of conduct where that occurred. Respondent admitted that, by assisting Ross, he violated *RPC* 8.4(a). He also acknowledged that, by allowing his name to be used in court documents as attorney of record for clients who had not retained him and by allowing Ross to prepare the complaints, litigate and settle the cases, and sign his name to the vast majority of documents in these cases, he violated *RPC* 8.4(c) and (d).

The OAE recommended the imposition of a one-year suspension, arguing that aggravating factors put this case in the category of mortgage fraud cases and runner cases. The OAE considered, in mitigation, the relationship between Ross and respondent; Ross is eleven years older than respondent and had been practicing personal injury law since 1973. Although respondent was admitted to the bar in 1985, he practiced as an associate for eight months and then managed a family business, May's Lumber and Building Center, for five years. During this time, respondent was treated for cancer and recovered from the disease. After the family business closed, respondent began a solo law practice in early 1992. Less than one year later, Ross proposed the referral arrangement to respondent.

The stipulation listed the following mitigating factors:

- Respondent's inexperience as a lawyer;
- Respondent's voluntary disengagement from the conflict of interest scheme;
- Respondent's initial cooperation with the OAE investigation (apparently, respondent's cooperation later vanished as a result of intimidation by Ross);
- Respondent's previous unblemished career.

The stipulation also noted the following aggravating factors:

- The conflict of interest scheme continued for four years;
- Respondent participated in sixty-nine referral cases;
- Respondent realized a financial gain of almost \$25,000 and Ross received almost \$50,000 from thirty-three of the sixty-nine cases.

\* \* \*

Respondent acknowledged that he violated *RPC 1.7* and *RPC 8.4(a), (b) and (d)*. The stipulation provides ample basis to support violations of *RPC 8.4(a), (b) and (d)*, but not *RPC 1.7*. Although respondent admitted that he engaged in a conflict of interest, it was Ross, not respondent, who represented the parties with conflicting interests. Respondent and Ross agreed that Ross would refer to respondent clients whom Ross could not represent due, to a conflict of interest. Instead of following this arrangement, Ross continued to represent both parties, despite the presence of a conflict of interest. Respondent himself, thus, did not violate *RPC 1.7*. He did, however, assist Ross in doing so, thereby violating *RPC 8.4(a)*.

Although at the beginning of this relationship, respondent may have intended to represent the clients referred by Ross, he did not do so, instead permitting Ross to file the complaints and settle or litigate the cases. Respondent allowed Ross or Ross' wife (respondent's sister) to sign his name to the complaints, civil case information statements and jurats on releases. Respondent's involvement in the vast majority of these cases was limited to forwarding the filing fees to Ross and disbursing the settlement funds to himself and to Ross. By permitting Ross to sign his name to complaints and other documents later filed with the court, respondent violated *RPC 8.4(c) and (d)*.

With respect to the quantum of discipline, we find that the cases cited in the stipulation are not quite analogous to this matter. In *Labendz*, the attorney committed fraud on a mortgage company while, in *Pajerowski*, the attorney used a "runner" to solicit personal injury cases. Although there are no cases precisely on point, the following cases are

comparable: *In re Chulak*, 152 N.J. 443 (1998) (three-month suspension for attorney who allowed a non-attorney to draft a complaint, sign the attorney's name on it and file it with the court; the attorney also used attorney business account checks bearing the name of the non-attorney, identified as "Esquire," and then misrepresented to the court that he had not been aware of the name on the checks); *In re Chamish*, 128 N.J. 110 (1992) (six-month suspension where the attorney, faced with a conflict of interest in representing both the driver and passenger in a motor vehicle case, forged another lawyer's signature on a complaint to make it appear that the other lawyer had instituted litigation; the attorney also failed to disclose to his clients the conflict of interest, failed to obtain the client's consent to transfer the matter to another attorney, failed to respond to clients' requests for information and failed to act with diligence). *See also In re Rosner*, 120 N.J. 370 (1990) (three-year suspension where the attorney gave his client signed blank letterhead stationery for his client's use and signed a letter that his client drafted, despite his knowledge of falsehoods contained in the letter).

Here, over a four-year period, respondent permitted Ross to forge his signature on almost seventy personal injury complaints and to file them with the court. Respondent derived a pecuniary benefit from the arrangement, receiving about \$24,000 in thirty-three of the cases alone. Because of the volume of cases, the extended period during which the wrongdoing took place and the financial motive, respondent's conduct was more serious than that of Chulak and Chamish, although less serious than Rosner's. We have considered the following mitigating factors: (1) it appears that respondent was "duped" by his older, more experienced brother-in-law, who took advantage of respondent's inexperience and poor

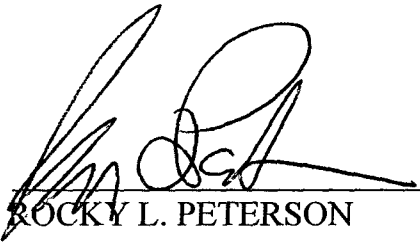
judgment; (2) before the OAE began its random audit of Ross' attorney records, respondent began to extricate himself from the referral arrangement because of his recognition that it was wrong; and (3) respondent has no other disciplinary history.<sup>1</sup>

Based on the foregoing, a six-member majority of the Board determined to suspend respondent for one year. Finding that, because respondent had been taken advantage of by Ross, discipline should be less severe, one member voted for a reprimand.

Two members did not participate.

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

Dated: May 29, 2001

By:   
ROCKY L. PETERSON  
Chair  
Disciplinary Review Board

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<sup>1</sup> Although the stipulation also listed respondent's initial cooperation as a mitigating factor, all attorneys are required to cooperate with disciplinary authorities. Moreover, respondent's cooperation was apparently short-lived.



**SUPREME COURT OF NEW JERSEY**

**DISCIPLINARY REVIEW BOARD  
VOTING RECORD**

**In the Matter of Isadore H. May  
Docket No. DRB 00-325**

**Argued: December 21, 2000**

**Decided: May 29, 2001**

**Disposition: One-year suspension**

Members	Disbar	One-year Suspension	Reprimand	Admonition	Dismiss	Disqualified	Did not Participate
Hymerling		X					
Peterson		X					
Boylan		X					
Brody		X					
Lolla		X					
Maudsley							X
O'Shaughnessy			X				
Schwartz							X
Wissinger		X					
<b>Total:</b>		6	1				2

*Robyn M. Hill* 7/25/01  
Robyn M. Hill  
Chief Counsel