

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 02-186

IN THE MATTER OF :
 :
S.R. KAPLAN :
 :
AN ATTORNEY AT LAW :

Decision

Argued: June 20, 2002

Decided: October 8, 2002

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

Respondent failed to appear for oral argument, despite proper notice.¹

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), pursuant to R.1:20-14, following respondent's resignation from the Florida bar.

¹ Notice was made by publication, on two dates, in the New Jersey Law Journal, the New Jersey Lawyer and the Miami Herald.

Respondent was admitted to the New Jersey bar in 1977. He was admitted to the Florida bar in 1980 as S. Richard Kaplan. He has no prior discipline in New Jersey and has been ineligible to practice law in this state since 1983.

Between May 2 and August 10, 2000, the Florida bar filed nine formal complaints against respondent. Each complaint alleged essentially the same type of misconduct. Respondent would be hired by a client, neglect the matter, fail to communicate with the client and, in some cases, lie to the client about the status of the case. After each ethics grievance was filed, respondent failed to cooperate with disciplinary authorities. These violations are comparable to violations of New Jersey RPC 1.1(a) and (b) (gross neglect and pattern of neglect), RPC 1.3 (lack of diligence), RPC 1.4(a) (failure to communicate), RPC 8.1(b) (failure to cooperate with disciplinary authorities) and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation).

When the matters reached the referee appointed to hear them in Florida, the parties agreed that respondent would admit the charges against him and consent to a three-year suspension, subject to the following conditions:

A During the term of his suspension, respondent shall participate in binding fee arbitration in each and every case at issue in this proceeding in which fees or costs are determined (by The Florida Bar) to be an issue. Upon the commencement of such binding fee arbitration, respondent shall file a financial affidavit with The Florida Bar and, if approved, shall enter into a payment plan to pay all restitution ordered by the arbitration mediator.

B During the term of his suspension, respondent shall reimburse to the Client Security Fund any and all sums paid out by the Fund on his behalf.

C. Binding fee arbitration and reimbursement of all sums paid out by the Client Security Fund shall be **conditions precedent** to respondent's

eligibility for reinstatement to the active practice of law. This condition is a material element of The Florida Bar's consideration in accepting this plea and it may not be compromised in any way.

D. After respondent is reinstated to the practice of law, he shall be placed on probation for a period of two (2) years from the date on which the Court enters its Order of reinstatement. Such probation shall require respondent to abide by the following terms and conditions:

i. Respondent shall be supervised by a Florida attorney who has been pre-approved by The Florida Bar and who is a member in good standing of the Florida Bar.

ii. Said supervising attorney shall render quarterly reports to The Florida Bar detailing respondent's case load, the progress of his work, and the state of his trust account if any.

The referee considered certain mitigating factors before he approved the agreement. Specifically, respondent was suffering from a psychological problem diagnosed as avoidance syndrome, for which he had begun receiving treatment. In addition, he was deeply remorseful for his conduct. The referee noted that respondent had previously received a private reprimand for trust account violations, a private reprimand for neglect, a public reprimand for neglect and a six-month suspension for neglect. He had also been suspended for two months for contempt.

By order dated January 25, 2001, the Supreme Court of Florida approved the referee's report and suspended respondent for three years.

Thereafter, additional grievances were filed against respondent, charging him with failure to fulfill his continuing legal education requirements, charging an excessive fee, neglecting a matter, and making misrepresentations. As a result, on July 25, 2001, respondent executed a Petition for Disciplinary Resignation from the Florida bar, in

which he requested that the Supreme Court of Florida grant his resignation from the bar for five years, nunc pro tunc to February 26, 2001, the effective date of his three-year suspension. On September 20, 2001, the Supreme Court of Florida granted respondent's petition for resignation, with leave to seek readmission after five years.

The OAE urged us to impose a five-year suspension, retroactive to February 26, 2001, the effective date of respondent's three-year suspension, with the condition that he not be permitted to apply for reinstatement in New Jersey until he has been readmitted in Florida.

* * *

Following a de novo review of the record, we determined to grant the OAE's motion for reciprocal discipline. Pursuant to R.1:20-14(a)(5) (another jurisdiction's finding of misconduct shall establish conclusively the facts on which the Board rests for purposes of a disciplinary proceeding), we adopted the findings of the Supreme Court of Florida.

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

[t]he 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 upon 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; or

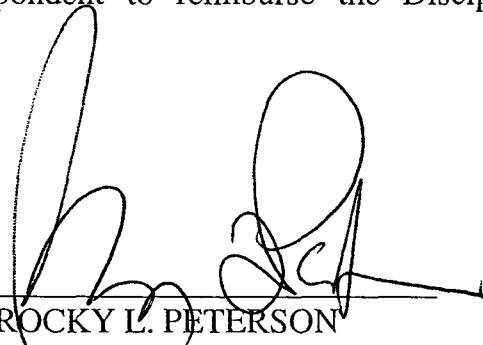
(E) The misconduct established warrants substantially different discipline.

The OAE cited several cases in support of its recommendation that respondent receive a lengthy suspension. In re Gaffney, 146 N.J. 522 (1996) (three-year suspension for misconduct in eleven matters, including gross neglect, pattern of neglect, failure to communicate with clients, lack of diligence, failure to return client files or other property, misrepresentation, conduct prejudicial to the administration of justice, conduct intended to disrupt a tribunal, knowingly disobeying an obligation under the rules of a tribunal, failure to reduce a fee agreement to writing and failure to cooperate with disciplinary authorities); In re Beck, 143 N.J. 135 (1996) (three-year suspension for attorney who engaged in multiple violations of various ethics rules, including pattern of neglect, lack of diligence, failure to communicate with clients, improperly terminating representation, lack of truthfulness, lack of candor toward a tribunal, unauthorized practice of law and conduct prejudicial to the administration of justice); In re Turner, 120 N.J. 706 (1990) (three-year suspension for pattern of neglect, failure to communicate and lack of diligence in the representation of sixteen clients; the attorney also failed to maintain trust and business account records).

Here, too, respondent neglected numerous client matters, failed to communicate with them, made misrepresentations and failed to cooperate with disciplinary authorities.

Furthermore, he did not advise the OAE of his disciplinary proceedings in Florida, as required by R. 1:20-4(a)(1). From our independent review of the record, we saw no reason to deviate from the mandate of R. 1:20-14(a), requiring the imposition of the same discipline imposed in Florida (five years). We, therefore, unanimously voted to impose a five-year suspension, retroactive to February 26, 2001. We also determined not to reinstate respondent in New Jersey before he is reinstated in Florida. Two members did not participate.

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 S.R. Kaplan
Docket No. DRB 02-186

Argued: June 20, 2002

Decided: October 8, 2002

Disposition: Five-year suspension

<i>Members</i>	<i>Disbar</i>	<i>Five-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					
Total:		7					2

 10/9/02
 Robyn M. Hill
 Chief Counsel