SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 02-127

IN THE MATTER OF :
:
JAMES P. FOX :
:
AN ATTORNEY AT LAW :

Decision
Default [*R.*1:20-4(f)]

Decided: June 20, 2002

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

This matter was before us based on a certification of default filed by the District X Ethics Committee ("DEC"), pursuant to *R.* 1:20-4(f).

Respondent was admitted to the New Jersey bar in 1981. Although he has no disciplinary history, when this matter was first considered by the DEC, respondent agreed to and signed an agreement in lieu of discipline. After he failed to fulfill the conditions of the agreement, a formal ethics complaint was filed.

On December 27, 2001 the DEC sent the complaint by regular and certified mail to respondent's last known office address listed in the *New Jersey Lawyers' Diary and Manual.* The certified mail return receipt (green card) was returned signed by Chris Weber and showing a delivery date of January 6, 2002. The regular mail was not

returned. On February 6, 2002 the DEC sent a letter to respondent by certified and regular mail, advising him that, unless he filed an answer, the allegations of the complaint would be deemed admitted and the record would be certified directly to us for the imposition of discipline. The letter further informed respondent that the complaint was deemed amended to include a charge of failure to cooperate with a disciplinary authority, based on his failure to answer the complaint. Neither the certified mail nor the regular mail was returned.

Respondent did not file an answer to the complaint.

In August 1998 Janet Schneider, the grievant, retained respondent to represent her in connection with personal injuries sustained in an automobile accident. Although respondent wrote two letters to an insurance company, he failed to take any other action to pursue Schneider's claim. During 1990 and 2000 Schneider contacted respondent regularly, requesting a resolution of the matter. Respondent failed to reply to Schneider's calls and to keep her informed of the status of the case.

The DEC investigator wrote to respondent on September 19 and October 10, 2000, requesting a reply to the grievance. On October 10, 2000 respondent acknowledged that, although he believed that Schneider's claim was barred by the verbal threshold provision in her insurance policy, he had not fully investigated the issue. He further conceded that he had failed to keep Schneider informed about her case and to reply to her inquiries. As mentioned above, although respondent signed an agreement in lieu of discipline, he failed to fulfill its conditions, resulting in the filing of the complaint in this matter.

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of James P. Fox
Docket No. DRB 02-127

Decided: June 20, 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 6/26/02
Robyn M. Hill
Chief Counsel

witness does not live or work in New Jersey, "the proponent of the witness shall either (A) produce the witness, at the proponent's expense, in the county in which the action is pending or at such other place in New Jersey upon which all parties shall agree, or (B) pay all reasonable travel and lodging expenses incurred by all parties in attending the witness' out-of-state deposition, unless otherwise ordered by the court." The rules, thus, provide a mechanism for seeking court intervention upon the inability of parties to reach an agreement about deposition costs. Respondent should have sought judicial relief to settle the matter. As a result of his failure to resolve this discovery issue, Dr. O'Laughlin, the primary defendant, was dismissed from the lawsuit.

We, thus, found that respondent's above actions and inactions violated *RPC* 1.1(a) and *RPC* 1.3.

Once respondent realized that he had mismanaged the litigation, his gross neglect and lack of diligence paled in comparison to his unscrupulous attempts to remedy the debacle that he had created. According to respondent, when he realized that he had mishandled the case, he became concerned that he was vulnerable to a legal malpractice lawsuit and that he might be fired. Instead of notifying his client of her potential claim against him, respondent went to great lengths to conceal his errors. He embarked on a course calculated to insure that neither Shore Imaging nor its attorney would find out about the litigation or have an opportunity to be heard in the matter. Despite his

awareness that either Lang or Bolger, not Stanton, represented Shore Imaging, respondent (1) sent only to Stanton a stipulation to amend the complaint to name Shore Imaging as a defendant; (2) failed to serve Lang, Bolger or Shore Imaging with a copy of the order amending the complaint to add Shore Imaging as a defendant; (3) did not inform the court that Shore Imaging was represented by Lang or Bolger, thus insuring that they would not receive notices of trial dates; (4) failed to serve Lang or Bolger with a copy of the default order; (5) did not notify Lang or Bolger of the proof hearing scheduled before Judge Donio; (6) lied to Judge Donio at the proof hearing, including misrepresenting that Stanton represented Shore Imaging, that he had served Shore Imaging with the complaint, that he had notified Shore Imaging's attorney of the proof hearing, and that despite his "valiant attempts" to conclude the matter, he had received no cooperation from the defendant's insurer; and (7) failed to docket the judgment or take action to enforce it for more than one year, because he knew that it would not withstand judicial scrutiny.

Respondent's affirmative misstatements to the court, and his misrepresentations by omission, were egregious and violated *RPC* 3.3(a)(1) and (5), *RPC* 3.3(d), *RPC* 4.1(a)(1), *RPC* 8.4(c) and *RPC* 8.4(d). Although respondent was not specifically charged with a violation of *RPC* 3.3(d) (in an *ex parte* proceeding, a lawyer shall inform the tribunal of all relevant facts known to the lawyer that should be disclosed to permit the tribunal to make an informed decision, whether or not the facts are adverse) the facts in

the complaint gave him sufficient notice of the alleged improper conduct and of the potential violation of that *RPC*. Furthermore, the record developed below contains clear and convincing evidence of a violation of *RPC* 3.3(d). In light of the foregoing, we deemed the complaint amended to conform to the proofs. *R.* 4:9-2; *In re Logan*, 70 *N.J.* 222, 232 (1976).

Although the complaint also charged that respondent's failure to disclose facts to Judge Donio violated *RPC* 3.3(a)(2) and (4), the record does not contain evidence that respondent's lack of disclosure assisted a client's illegal, criminal, or fraudulent act or that respondent offered evidence that he knew to be false. Accordingly, we dismissed those charges. In addition, although the special master found that respondent violated *RPC* 3.4(c), we did not find clear and convincing evidence that respondent disobeyed an obligation under the rules of a tribunal.

Moreover, because the record does not contain clear and convincing evidence that respondent forged Stanton's signature on the stipulation to amend the complaint, we dismissed the charges that respondent violated *RPC* 3.4(b) (a lawyer shall not falsify evidence) and *RPC* 8.4(b) (criminal act). The evidence presented to support the allegation that respondent forged Stanton's signature consists of the following:

- Stanton had no recollection of signing the stipulation;

- Neither Stanton's nor respondent's file contained a cover letter forwarding the stipulation from Stanton to respondent or a cover letter transmitting the stipulation to the court;

- Although when the OAE investigator reviewed respondent's file, it did not contain a cover letter transmitting the stipulation to Stanton, about three months later, Judge Todd found a cover letter in respondent's file, thus, raising the possibility that the cover letter had been fabricated;

- No cover letter returning the stipulation to respondent from Stanton has been located;

- The OAE investigator testified that, until the ethics hearing, respondent had never stated that he had used a courier to deliver the stipulation to Stanton and to the court.

Despite the above indicia that respondent may have forged Stanton's signature, Stanton testified that the signature on the stipulation was his. Moreover, although he could not recall signing the stipulation, he also did not remember receiving more than a dozen documents that he had to have received because they were retrieved from his file during the ethics hearing. Under these circumstances, the record does not contain clear and convincing evidence that respondent forged Stanton's signature.

It is clear that respondent failed to communicate with Gonzalez. Respondent stipulated that he had not contemporaneously informed Gonzalez of the dismissals of the various defendants. Gonzalez' testimony that respondent had never informed her of the dismissals, timely or untimely, was not rebutted. In addition, her confusion about the status of her case is illustrated by her belief that the proof hearing was a settlement. In

addition, respondent misrepresented to Gonzalez that he had attempted to execute on the judgment and that his efforts were hindered by an insurance coverage dispute. By misrepresenting the status of the matter, in violation of *RPC* 8.4(c), respondent also failed to keep Gonzalez informed about her case, in violation of *RPC* 1.4(a). By not informing Gonzalez of developments in her case, such as the dismissals of the defendants and the conflict over payment of the expert's deposition expenses, respondent failed to explain the matter reasonably necessary to permit Gonzalez to make informed decisions about the litigation.

Finally, the record contains clear and convincing evidence that respondent failed to protect Gonzalez' interests upon termination of the representation. After obtaining the $300,000 default judgment, respondent took no action to execute on it. Even after he had waited one year in order to protect against a motion to vacate the judgment, he took no steps to collect funds for his client. He testified that he was reluctant to bring the matter to the forefront because of his concerns about the "frailty" of the judgment. Respondent, thus, placed his own interests of concealing his neglect and misconduct above those of his client. The effect was that, although the representation had concluded, respondent did not notify Gonzalez that he would no longer be handling her case. In addition, respondent admitted that he did not turn over his file to Gonzalez until after the grievance had been

filed. His failure to protect Gonzalez' interests and to turn over her file violated *RPC* 1.16(d).

In sum, respondent was guilty of gross neglect; lack of diligence; lying to a tribunal; failure to inform a tribunal of relevant facts in an *ex parte* proceeding; false statement to third parties; conduct involving dishonesty, fraud, deceit or misrepresentation; conduct prejudicial to the administration of justice; failure to communicate with a client; and failure to protect a client's interests upon termination of representation.

As to the quantum of discipline, the OAE recommended that respondent be suspended for two years. Although respondent argued before the special master that no discipline was warranted, he urged us to impose no more than a thirty-day suspension. In cases involving primarily the lack of candor to a tribunal, although suspensions are the most frequent sanctions, the range of discipline is wide. *See, e.g., In the Matter of Robin K. Lord* DRB 01-250 (2001) (admonition where the attorney failed to reveal her client's real name to a municipal court judge when her client appeared in court using an alias, thus resulting in a lower sentence because the court was not aware of the client's significant history of motor vehicle infractions; in mitigation, the attorney disclosed her client's real name to the municipal court the day after the court appearance, whereupon the sentence was vacated); *In re Whitmore*, 117 *N.J.* 472 (1990) (reprimand where a municipal prosecutor failed to disclose to the court that a police officer whose testimony was critical

to the prosecution of a charge of driving while intoxicated intentionally left the courtroom before the case was called, resulting in the dismissal of the charge; attorney did not have an improper motive and "may not have clearly seen the distinct line that must be drawn between his obligations to the court and his commitment to the State, on the one hand, and, on the other, his feelings of loyalty and respect for the police officers with whom he deals on a regular basis." *Id.* at 480); *In re Norton and Kress*, 128 *N.J.* 520 (1992) (both the prosecutor and defense counsel were suspended for three months for permitting the dismissal of a charge of driving while intoxicated; although the attorneys represented to the municipal court that the arresting officer did not wish to proceed with the case, they failed to disclose that the reason for the dismissal was the officer's desire to give a "break" to someone who supported law enforcement); *In re Kernan*, 118 *N.J.* 361 (1990) (attorney received a three-month suspension for failure to inform the court, in his own matrimonial matter, that he had transferred property to his mother for no consideration, and failure to amend his certification listing his assets; attorney had a prior private reprimand); *In re Forrest*, 158 *N.J.* 429 (1999) (attorney suspended for six months for failure to disclose the death of his client to the court, to his adversary and to an arbitrator; the attorney's motive was to obtain a personal injury settlement); *In re Telson*, 138 *N.J.* 47 (1994) (attorney suspended for six months after he concealed a judge's docket entry dismissing his client's divorce complaint, obtained a divorce judgment from

another judge without disclosing that the first judge had denied the request, and denied his conduct to a third judge, only to admit to this judge one week later that he had lied because he was scared); *In re Cillo*, 155 *N.J.* 599 (1998) (one-year suspension where, after misrepresenting to a judge that a case had been settled and that no other attorney would be appearing for a conference, the attorney obtained a judge's signature on an order dismissing the action and disbursing all escrow funds to his client; attorney knew that at least one other lawyer would be appearing at the conference and that a trust agreement required that at least $500,000 of the escrow funds remain in reserve); *In re Kornreich*, 149 *N.J.* 346 (1997) (three-year suspension where attorney, who had been in an automobile accident, misrepresented to the police, her lawyer and a municipal court judge that her babysitter had been operating her vehicle and presented false evidence in an attempt to falsely accuse another of her own wrongdoing; two members of the Court voted for disbarment).

For violations in the combination presented here, suspensions have been imposed. *See, e.g, In re Fornaro*, 152 *N.J.* 449 (1998) (three-month suspension for the following misconduct in four matters: gross neglect, lack of diligence, failure to communicate with clients, failure to communicate the basis of the fee, failure to turn over client's file upon termination of the representation, false statement of material fact to a tribunal, failure to cooperate with disciplinary authorities, conduct involving dishonesty, fraud, deceit or

misrepresentation and false statement of material fact to disciplinary authorities); *In re Knight*, 152 *N.J.* 433 (1998) (six-month suspension for gross neglect in one matter, misrepresentation in three matters, failure to cooperate with disciplinary authorities, and recordkeeping violations); *In re Sternstein,* 152 *N.J.* 433 (1998) (two-year suspension imposed on attorney who, in ten matters, engaged in multiple ethics offenses involving gross neglect and pattern of neglect, lack of diligence, failure to communicate, failure to disclose a material fact to a tribunal, knowingly disobeying an obligation of a tribunal, failure to cooperate with disciplinary authorities and conduct involving dishonesty, fraud, deceit or misrepresentation; attorney had a prior three-month suspension).

Here, in mitigation, respondent has no disciplinary history, all of the misconduct was confined to one case and he submitted substantial evidence, by way of testimony and letters, of his reputation for honesty and professionalism. In aggravation, respondent's client was harmed by his unethical conduct. Gonzalez' judgment was vacated ten years after the medical malpractice allegedly occurred. The record does not contain information about any steps taken to reinstate the litigation. In addition, respondent made numerous serious misrepresentations to Judge Donio in an effort to obtain a default judgment that was procedurally deficient for failure to serve the defendant. Respondent's misconduct pervaded over an extensive period of time. He filed the medical malpractice complaint in February 1993. The default judgment that he obtained was vacated in November 2001,

more than eight years later. This is not a case in which a young and experienced attorney momentarily panics and exercises poor judgment. Respondent's misconduct extended over a period of years, encompassed numerous acts of dishonesty, and was motivated, in part, by his own interest in concealing his wrongdoing. Respondent's concerns about his misconduct becoming known, and the possibility that he would be sued for legal malpractice and lose his job, kept him from taking action to enforce his client's judgment. Moreover, substantial judicial resources were expended, including the court's time in preparing for and conducting the proof hearing and the hearing on the motion to vacate the judgment.

After balancing the mitigating and aggravating factors, we unanimously voted to impose a six-month suspension on respondent.

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

Disciplinary Review Board
Mary J. Maudsley, Chair

By: Julianne K. DeCore
Julianne K. DeCore
Acting Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Aaron S. Friedmann
Docket No. DRB 03-237

Argued: October 16, 2003

Decided: December 8, 2003

Disposition: Six-month suspension

Members	*Disbar*	*Six-month Suspension*	*Reprimand*	*Admonition*	*Dismiss*	*Disqualified*	*Did not participate*
Maudsley		X					
O'Shaughnessy		X					
Boylan		X					
Holmes		X					
Lolla		X					
Pashman		X					
Schwartz		X					
Stanton		X					
Wissinger		X					
Total:		9					

Julianne K. DeCore
Chief Counsel