SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. 02-458

IN THE MATTER OF

ANTHONY C. BRUNEIO

AN ATTORNEY AT LAW

Decision

Argued: February 6, 2003

Decided: April 14, 2003

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 on a motion for reciprocal discipline filed by the Office of Attorney Ethics ("OAE"), pursuant to R. 1:20-14, following respondent's disbarment by consent in Pennsylvania.

Respondent was admitted to the New Jersey bar in 1991. He has no disciplinary history.

On March 4, 2002, respondent was disbarred by consent in Pennsylvania after

admitting that the material facts in a petition for discipline ("petition") and in six requests for statement of respondent's position ("DB-7 requests") were true. Respondent did not notify the OAE of his disbarment, as required by R. 1:20-14(a)(1).

I. The Breneman Matter

In June 1997, David Nicholls, respondent's former law partner, filed a "custody complaint" on behalf of John Breneman against Jennifer Mertz. Apparently, Breneman sought custody of his and Mertz's young son. In the complaint, Breneman's mother and Nicholls were listed as intervenors. Both Breneman and Mertz had lived with Nicholls prior to June 1997.

In August 1997, respondent entered an appearance on behalf of Breneman, apparently substituting for Nicholls. Thereafter, Nicholls filed a custody complaint on his behalf against Breneman and Mertz, which was consolidated with the Breneman v. Mertz matter.

In October 1997, respondent notified the master in custody for the Commonwealth of Pennsylvania that Breneman's whereabouts were unknown and that he did not wish to be involved in the custody proceedings in his client's absence. However, respondent did not withdraw from representing Breneman.

In January 1998, respondent served a subpoena on Bell Atlantic to obtain the telephone records of Breneman's mother. According to the disciplinary petition, (1) respondent had no legitimate basis for obtaining the telephone records; (2) respondent did not

consult his client before issuing the subpoena; (3) respondent did not obtain the necessary leave of court to subpoena the records; (4) the subpoena did not identify the party that respondent purported to represent in the matter; (5) respondent never notified Breneman's mother that he was seeking to obtain her telephone records; and (6) respondent misled Bell Atlantic by using a subpoena that stated that he was permitted to access the telephone records pursuant to one court rule, when he knew or should have known that a different rule controlled the issuance of subpoenas in custody matters.

In February 1998, respondent signed a "custody stipulation agreement" with Nicholls, allowing Nicholls "partial physical custody" of Breneman's son. The agreement was then entered as a custody stipulation and order in the Pennsylvania family court. Respondent signed the stipulation without Breneman's consent, at a time when he was unaware of Breneman's whereabouts.

The petition charged that respondent violated RPC 1.7(b) (conflict of interest; representing a client when that representation may be materially limited by the lawyer's own interests), RPC 3.5 (ex parte communication with a judge, juror, prospective juror or other official, except as permitted by law), RPC 4.4 (using methods of obtaining evidence that violate the legal rights of a third person) and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation). The RPC 1.7(b) charge is seemingly based on respondent's putting his former partner's interests ahead of his client's interests. The RPC 3.5 charge is apparently premised on respondent's communication to the master in custody.

II. The Kerecz Matter

In February 2000, Dianne Kerecz and her aunt met with Gail Scharer, respondent's paralegal, concerning the filing of a Chapter 7 bankruptcy petition on behalf of Kerecz. Kerecz signed a fee agreement and Kerecz's aunt issued a $350 check to respondent for his fee. Scharer gave Kerecz a credit report request form and instructed her to send the form, with the required fee, to the credit agency.

On February 5, 2000, Kerecz left the credit report and letters from creditors with another attorney in respondent's Allentown office building, pursuant to instructions on a note on respondent's office door. When Kerecz called respondent's office on February 26, 2000, she was told that they had not received the documents, but that they would retrieve them from the other attorney. Kerecz was told to meet with respondent on March 28, 2000.

When Kerecz arrived at respondent's office on March 28, 2000, she learned that he had been evicted from it. Kerecz then telephoned respondent at his home. Respondent told Kerecz that "everything was okay with her bankruptcy filing."

Another appointment was scheduled for April 5, 2000 at respondent's Easton office, but no one was there when Kerecz arrived. When Kerecz telephoned respondent, he told her that (1) she had to remit the remaining $700 fee; (2) Scharer had been his girlfriend, as well as his paralegal, and that she had quit her job when they broke up; and (3) his files, appointment book and computer had been stolen. Kerecz then spoke with "Kim," respondent's employee, about obtaining a new credit report, but never received a return call,

despite two messages left on respondent's office answering machine. When Kerecz called respondent's home telephone number, she was told that it was unpublished.

In May 2000, Robert Harley, Esq., Kerecz's brother-in-law, requested that respondent return Kerecz's money. Although respondent promised Harley that he would "get back to him," respondent never called Harley. Respondent never filed the bankruptcy petition on behalf of Kerecz and never returned her retainer.[1]

The DB-7 request states that respondent's conduct violated RPC 1.1 (presumably subsection (a)) (gross neglect), RPC 1.3 (lack of diligence), RPC 1.4(a) (failure to communicate with the client), RPC 1.5(a) (excessive fee), RPC 1.15(b) (failure to deliver funds to which the client or third person is entitled), RPC 1.16(d) (failure to refund any advance payment of fee that has not been earned), RPC 5.3(c) (failure to supervise a non-lawyer employee) and RPC 8.4(d) (conduct prejudicial to the administration of justice).[2] The RPC 1.5(a) and RPC 1.15(b) charges are apparently premised on respondent's failure to return Kerecz's retainer. Those charges are cumulative, since the DB-7 request also charges a violation of RPC 1.16(d).

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1 The DB-7 request does not state whether Kerecz paid the additional $700 requested by respondent.

2 The DB-7 request actually states that, if the factual allegations are true, "we are concerned that you may have violated the [enumerated] Rules of Professional Conduct." However, in respondent's consent to disbarment, he "acknowledge[d] that the material facts" in the petition and in the DB-7 requests were true.

III. The Kerstetter Matter

On May 11,1999, John Kerstetter appeared at respondent's office for a scheduled meeting regarding the filing of a bankruptcy petition. Respondent did not appear for the meeting. Instead Scharer had Kerstetter sign a fee agreement, but did not give him a copy of that document. On June 28, 1999 and January 27, 2000, Kerstetter gave Scharer checks for $300 and $400, respectively, for respondent's fee.

Respondent never filed a bankruptcy petition on behalf of Kerstetter, never returned the $700 fee, never returned Kerstetter's "numerous" telephone calls and never returned Kerstetter's file, despite "numerous" requests.

The DB-7 request states that respondent's conduct violated RPC 1.1(presumably subsection (a)), RPC 1.3, RPC 1.4(a), RPC 1.5(a) and RPC 1.15(a) (safekeeping property). The RPC 1.15(a) charge is seemingly based on respondent's failure to keep Kerstetter's $700 retainer in trust. In New Jersey, absent an agreement with the client, an attorney is not required to deposit a retainer in a trust account.

IV. The Walker Matter

In August 1999, respondent filed an appeal of a driver's license suspension on behalf of Ulysses Walker. The hearing on the appeal was scheduled for November 4, 1999 at 10 a.m. At approximately 8:45 a.m. on that day, respondent called the prothonotary's office to inquire what he would have to do to withdraw the appeal. Respondent was told that he

would have to appear in court if he wanted to withdraw the appeal and that, if he wanted to seek an adjournment, he would have to obtain the consent of his adversary. At 9:30 a.m., respondent called the court administrator's office and again asked how he could withdraw the appeal. He was told that "he would have to contact the commonwealth or come here in person and apply for a continuance."

Respondent did nothing and did not appear for the hearing. Walker and a representative of the Department of Transportation appeared. The judge then issued an order for respondent to show cause why he should not be held in contempt of court for failure to appear. When respondent appeared on the return date of the order to show cause, the judge held him in contempt of court and ordered him to pay a $250 fine plus costs. The DB-7 request does not state whether respondent complied with the order.

The DB-7 request charges that respondent's conduct violated RPC 1.1(presumably subsection (a)), RPC 1.3, RPC 1.4(a), RPC 1.15(c) (failure to safeguard funds in which an attorney and a third person claim interests), RPC 1.16(d), RPC 3.2 (failure to expedite litigation), RPC 3.3(a) (false statement of material fact or law to a tribunal), RPC 8.4(a) (violating or attempting to violate the Rules of Professional Conduct, knowingly assisting or inducing another to do so, or doing so through the acts of another) and RPC 8.4(d). Although it is not clear, the RPC 3.3(a) charge is apparently premised on respondent's initial call to the prothonotary's office, asking what he would have to do to withdraw the appeal, and subsequent call to the court administrator's office, asking the same question.

V. The Goodman Matter

In February 2000, Richard Goodman paid a $2,500 retainer to respondent to represent him in connection with a charge of driving under the influence. Respondent filed a motion to remand for a preliminary hearing. The preliminary hearing was scheduled for March 14, 2000. Goodman was present, but respondent did not appear. The judge then called respondent's office and sent a notice rescheduling the hearing for April 20, 2000. On April 20, 2000, the hearing had to be rescheduled again because respondent failed to appear, although Goodman was present.

Respondent again failed to appear on the rescheduled date, May 15, 2000, although Goodman was again present. The judge left a message on respondent's voice mail to call her, but respondent did not return the call.

During this time period, respondent never returned Goodman's "numerous" telephone calls.

The hearing was once again rescheduled for June 15, 2000. Again, Goodman appeared for the hearing, but respondent did not. When the judge called respondent's Allentown office number, she received a recorded message that the number had been disconnected. When she called respondent's Easton office, she received a message that his voice mailbox was full.

The hearing was one more time rescheduled, for July 19, 2000. On July 18, 2000, respondent's secretary telephoned the judge's secretary and stated that respondent would be

unable to attend the hearing because he had fallen two weeks before and was confined to bed. When respondent's secretary was asked why she had waited until the day before the hearing to telephone the court, she replied that she "had just been asked" to make the call by respondent.

On July 19, 2000, the judge advised Goodman that "he had no choice but to proceed without counsel." Goodman "reluctantly" signed a waiver of counsel form. At the hearing, a prima facie case was established and Goodman's case was scheduled for trial in the criminal division of the county Court of Common Pleas.

At the August 14, 2000 criminal trial call, Goodman told the judge that respondent was supposed to represent him, but had failed to appear. The judge ordered Goodman to meet with the prosecutor. Thereafter, the prosecutor attempted to contact respondent, but respondent's Allentown telephone number had been temporarily disconnected and no one answered his Easton office telephone. Goodman also went to respondent's home on two occasions, but no one answered the door.

Respondent never communicated with Goodman and never returned the unearned portion of the $2,500 retainer.

The court adjourned the trial to September 2000. The DB-7 request does not state what occurred at that time.

The DB-7 request charges that respondent's conduct violated RPC 1.1(presumably subsection (a)), RPC 1.3, RPC 1.4(a), RPC 1.15(b), RPC 1.15(c), RPC 1.16(a)(2) (failure to

withdraw from representation when a physical or mental condition materially impairs the attorney's ability to represent a client), RPC 3.2, RPC 8.4(a), RPC 8.4(c) and RPC 8.4(d). Apparently, the RPC 1.16(a)(2) charge is premised on respondent's failure to appear at the June 14, 2000 hearing, when he was allegedly confined to bed.

VI. The Mann Matter

In June 1999, Cindy Mann retained respondent to file a Chapter 7 bankruptcy petition. The fee agreement stated that Mann would pay respondent a "nonrefundable" $500 fee and a $175 filing fee in biweekly $50 installments. By May 9, 2000, Mann had paid $715 to respondent.[3]

Between June 1999 and May 2000, respondent failed to return Mann's "numerous" telephone calls. Also, he did not reply to her December 1999 letter requesting that he provide an accounting of the monies she had paid to him.

On March 23, 2000, Mann met with "Kim," respondent's paralegal. Kim told Mann that she would be handling Mann's file. On May 9, 2000, at Kim's request, Mann dropped off her financial information at respondent's Allentown office. Thereafter, Mann was told to meet with "Tricia," another paralegal, at respondent's Easton office, which turned out to be respondent's apartment. The DB-7 request does not state whether Mann actually met with

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3 The DB-7 request does not explain why Mann paid an extra $40.

Tricia.

In August 2000, respondent called Mann's employer, Devon Consulting, to inquire about employment opportunities with the company. At that time, Mann learned that respondent had not filed her bankruptcy petition, had closed his law office and had ceased the practice of law. On August 28, 2000, Mann left a message on respondent's home answering machine, requesting that he return her fee and her financial records. Respondent never communicated with Mann and never returned her fee or her file.

The DB-7 request states that respondent's conduct violated RPC 1.1(presumably subsection (a)), RPC 1.3, RPC 1.4(a), RPC 1.4(b), RPC 1.15(b), RPC 1.15(c), RPC 1.16(a)(2), RPC 8.4(c) and RPC 8.4(d).

VI. The Conklin Matter

In January 2000, Dennis Conklin retained respondent to represent him on a charge of driving while under the influence. The retainer agreement provided that, for a "nonrefundable" $1,000 fee, respondent would represent Conklin in "[a]ll proceeding through preliminary hearing, arraignment – Court of Common Pleas." Conklin paid the $1,000 to respondent in installments, making the last payment in April 2000. On June 19, 2000, respondent represented Conklin in entering a guilty plea in the case. The sentencing was scheduled for July 26, 2000.

Respondent did not return Conklin's July 19, 24 and 25, 2000 telephone calls. He

failed to appear at Conklin's sentencing. The court adjourned the sentencing to September 20, 2000. The court also issued an "attachment" for the sheriff to bring respondent to court to explain his failure to appear. The DB-7 request does not state whether the sheriff ever located respondent.

Between July 26 and September 19, 2000, Conklin made ten telephone calls to respondent's office, which were not returned. On August 19, 2000, respondent was placed on the list of inactive attorneys.

The DB-7 request states that respondent's conduct violated RPC 1.1(presumably subsection (a)), RPC 1.3, RPC 1.4(a), RPC 1.4(b), RPC 1.16(d) and RPC 3.2.

* * *

In his brief, respondent contended that (1) a five-year suspension here was excessive and that he should be given a suspension of fewer than three years; (2) he had no intention "of returning to the practice of law in the foreseeable future"; (3) he was "unintentionally hoodwinked" during the Pennsylvania disciplinary proceedings; (4) he did not understand that his resignation, pursuant to Rule 215 Pa.R.D.E, was tantamount to disbarment by consent; (5) the Breneman petition was "garbage" because the factual allegations were incorrect; (6) he had stipulated that the material facts in the Breneman petition were true because the Pennsylvania disciplinary authorities would not accept any alterations to the

resignation form; and (7) he had refunded the fees paid by Kerecz, Kerstetter and Conklin.

Respondent admitted that he neglected his clients' cases. However, he attributed his neglect to "law office problems" caused by (1) a wrongful charge of arson filed against him; (2) the two and one-half year delay in his arson trial, which resulted in a not guilty verdict; (3) his "heavy reliance" on his paralegal for his bankruptcy practice and her subsequent departure from his office; (4) the fact that, after his paralegal began working for another attorney – the owner of the building in which respondent had his law office – his mail was being opened by some unknown person; (5) the fact that his office was vandalized and his computer, appointment calendar, client list and some client files were stolen; (6) the fact that the telephone company cut off his office and home telephone service, although he had negotiated monthly payments for his arrearages.

Respondent did not provide any evidence to support his contentions. He attached two documents to his brief: (1) a short story, written by him, about his mistreatment by the Allentown police and fire departments and the Lehigh County district attorney's office in connection with the arson charge and (2) a copy of a complaint that he filed in the United States District Court for the Eastern District of Pennsylvania against those entities and individuals employed by the entities, alleging malicious prosecution, false arrest and various constitutional claims.

The OAE urged us to suspend respondent for five years and not reinstate him in New Jersey until he has been readmitted in Pennsylvania.

* * *

Upon a de novo review of the full 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 Pennsylvania.

Reciprocal disciplinary 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.

We agree with the OAE that a review of the record does not reveal any conditions that

would fall within the ambit of subparagraphs (A) through (E). In Pennsylvania, a disbarred attorney may apply for reinstatement after five years.

Respondent neglected his clients' cases, failed to reply to their inquiries, failed to appear at court hearings, engaged in a conflict of interest, entered into a custody stipulation without his client's knowledge or consent, issued an improper subpoena, failed to protect his clients' interests upon termination of the representation, failed to return unearned fees, failed to return his clients' files and, ultimately, abandoned his clients.

Respondent's utter disregard for his clients warrants substantial discipline. See In re Foushee, 149 N.J. 399 (1997) (three-year suspension for engaging in gross neglect of four client matters, failure to communicate with clients, failure to prepare written fee agreements, misrepresentation and failure to cooperate with disciplinary authorities); In re Gaffney, 146 N.J. 422 (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 cooperate with disciplinary authorities, failure to return client files or other property, misrepresentations, conduct prejudicial to the administration of justice, conduct intended to disrupt a tribunal, knowingly disobeying an obligation under the rules of a tribunal and failure to reduce a fee agreement to writing; attorney had a prior reprimand and a two and one-half year suspension); 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, improper termination of representation, lack of truthfulness, lack of candor toward a tribunal, unauthorized practice of law and conduct prejudicial to the administration of justice; the attorney had an extensive disciplinary history); In re Terner, 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).

Abandonment of clients accompanied by other violations may at times result in disbarment. See In re Golden 156 N.J. 365 (1998) (disbarment for abandonment of clients, multiple instances of gross neglect, lack of diligence, failure to communicate and failure to protect the clients' interests on termination of representation; the attorney had been temporarily suspended for abandonment of his law practice and failure to cooperate with the disciplinary investigation and, in two default matters involving gross neglect, lack of diligence and failure to refund an unearned fee, had been indefinitely suspended until the resolution of all ethics proceedings pending against him); In re Harris, 131 N.J. 117 (1993) (disbarment where the attorney, in ten matters, engaged in conduct that included gross neglect, failure to communicate with clients, lack of diligence, dishonesty, deceit and misrepresentation, failure to safeguard client' property, failure to cooperate with ethics authorities and abandonment of clients).

Based on the foregoing, we unanimously determined to suspended respondent for five

years and not reinstate him in New Jersey until he has been readmitted in Pennsylvania. Two members did not participate.

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

By: _____
ROCKY L. PETERSON
Chair
Disciplinary Review Board

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Anthony C. Bruneio
Docket No. DRB 02-458

Argued: February 6, 2003

Decided: April 14, 2003

Disposition: Five-year suspension

Members	*Disbar*	*Five-year 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:		7					2

Robyn M. Hill 4/23/03
Robyn M. Hill
Chief Counsel