

SUPREME COURT OF NEW JERSEY  
Disciplinary Review Board  
Docket No. DRB 02-185

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IN THE MATTER OF  
ALAN E. KUDISCH  
AN ATTORNEY AT LAW

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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.

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 two-year suspension in New York.

Respondent was admitted to the New Jersey bar in 1979. While he has no disciplinary history in New Jersey, he has been disciplined four times in New York. On

March 9, 1993, he received an admonition for neglecting a legal matter and refusing to perfect an appeal until the balance of his fee was paid. On February 22, 1995, he received a letter of caution for failing to use written retainer agreements and falsely promising a former client that he would pay him money that was owed. Respondent was admonished on September 12, 1995, for failing to advance an appeal and/or failing to withdraw from the case in a proper manner, engaging in a conflict of interest, improperly converting an assigned legal matter into a private retainer and failing to notify the court of said change. Finally, on September 19, 1996, he was again admonished for neglecting a legal matter entrusted to him and misrepresenting the status of the case.

As to this matter, effective January 10, 2002, respondent was suspended in New York for two years for conduct involving fraud, dishonesty, deceit and misrepresentation, in violation of DR 1-102(a)(4), comparable to our RPC 8.4(c) and DR 1-102(a)(4), DR 2-110(a)(2) and DR 2-110(b) comparable to our RPC 1.16, for failure to properly withdraw from a litigated matter and failure to return the client's file.

The factual basis for respondent's suspension is set forth in the order of the New York Supreme Court, Appellate Division, Second Judicial Department:

[I]n 1997 respondent was retained by Catherine Roche to represent her son Thomas in regard to a criminal conviction. The respondent received a retainer of \$4,700. The respondent was aware that the court had assigned counsel to represent Thomas Roche and respondent failed to notify the court of his retainer. The respondent failed to take any action on behalf of Thomas Roche nor [sic] respond to inquiries made by Catherine Roche relative to this matter. He failed to reimburse Mrs. Roche for any portion of the retainer received until August 1998 and February 1999 after a complaint was filed with the Grievance Committee.

[I]n or about May 1994, respondent was retained by Edward N. Roslyn Rockwitz to represent them in a breach of contract action against the Huntington Townhouse. On or about July 1994, respondent caused a summons and complaint to be served on the Huntington Townhouse. On or about December 1997 after many inquiries, respondent assured his clients that he had filed a note of issue with the court and sent what he said was a copy of said note of issue, which in fact, he had never filed. He further misrepresented the status of a pending motion falsely stating that the court had not yet decided said motion.

In 1996 respondent determined that clients [sic] case was not viable, but failed to make appropriate motion to be relieved. Respondent ignored the numerous requests of client for return of their file until after a complaint was made to the Grievance Committee.

The respondent did have many personal difficulties which may have affected his work. He testified fully about his family difficulties, his health problem which he states were the cause of his legal difficulties.

[Exhibit A to the OAE's motion.]

In an opinion and order dated December 10, 2001, the Appellate Division, Second Judicial Department, imposed a two-year suspension on respondent, effective January 10, 2002. A subsequent decision and order, dated January 7, 2002, extended the effective date of respondent's two-year suspension to February 7, 2002.

As noted above, in the Roche matter, the Appellate Division found respondent guilty of conduct involving fraud, dishonesty, deceit and misrepresentation, comparable to a violation of our RPC 8.4(c). In the Rockwitz matter, the Appellate Division found that respondent had violated DR 1-102(a)(4) as well as DR 2-110(a)(2) and DR 2-110(b), comparable to our RPC 1.16. Respondent's misconduct in these matters would also violate our RPC 1.3 (lack of diligence) and RPC 1.4(a) (failure to communicate with client).

According to the OAE, respondent's conduct does not warrant a two-year suspension in New Jersey, but more closely approximates cases resulting in one-year suspensions. The OAE relied on In re Herron, 140 N.J. 229 (1995) (one-year suspension where, in a series of seven cases, the attorney either grossly neglected the matters or failed to act with reasonable diligence and failed to keep the clients reasonably informed about the status of their cases; in two of the cases, he misrepresented the status of the cases to the clients and failed to cooperate with disciplinary authorities); In re Marum, 157 N.J. 625 (1999) (one-year suspension for gross neglect in three matters, lack of diligence in eight matters, failure to communicate with clients in nine matters, misrepresentations in six matters and pattern of neglect over an eleven-year period; attorney had two prior admonitions in 1995 and 1997); In re Lawnick, 162 N.J. 113 (1999) (one-year suspension where, in six matters, attorney accepted retainers but took no action, failed to communicate with clients and failed to cooperate with disciplinary authorities; attorney had prior disciplinary history, including an agreement in lieu of discipline in 1997 and in 1998 a temporary suspension for failure to comply with a Supreme Court order); and In re Abdallah, 156 N.J. 551 (1999) (one-year suspension where attorney was disbarred in New York for neglect, lack of diligence, failure to communicate with clients, failure to return unearned retainers and failure to cooperate with disciplinary authorities).

In recommending only a one-year suspension, the OAE noted that respondent provided notice of his impending New York suspension to New Jersey disciplinary authorities on February 1, 2002. The OAE, therefore, requested that the suspension be

made retroactive to February 7, 2002, the effective date of his New York suspension and the date that he stopped practicing law in New Jersey.

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Upon 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 the State of New York, Appellate Division, Second Judicial Department).

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:

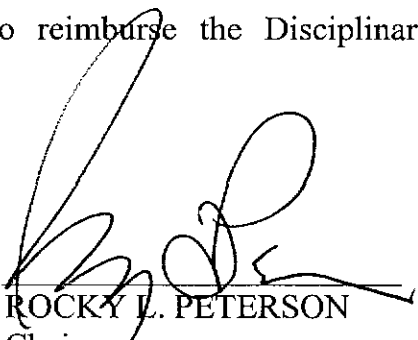
- (A) The disciplinary order of the foreign jurisdiction was not entered;
- (B) The disciplinary or disability order of the foreign jurisdiction does not apply to the respondent;
- (C) The disciplinary or disability order of the foreign jurisdiction does not remain in full force and effect as the result 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 subsection (E) is applicable here, namely, that respondent's misconduct in New York warrants substantially different discipline in New Jersey. As the OAE correctly pointed out, respondent's actions would not result in a two-year suspension in New Jersey.

Although we were troubled by respondent's conduct, we were persuaded that a two-year suspension should be reserved for cases involving more serious misconduct. The circumstances here convince us that a one-year suspension more adequately addresses the nature of respondent's ethics transgressions and, at the same time, preserves the confidence of the public in the profession. We, therefore, unanimously voted to impose a one-year suspension, retroactive to February 7, 2002. 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