SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 16-079
District Docket No. XIV-2014-0337E

IN THE MATTER OF	
SANFORD F. SOLNY	
AN ATTORNEY AT LAW	

Decision

Argued: July 21, 2016

Decided: November 21, 2016

Hillary K. Horton 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), following New York's suspension of respondent for two years, for his violation of the New Jersey equivalents of RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation) and RPC 8.4(d) (conduct prejudicial to the administration of justice). The OAE seeks discipline of either a censure or a three-month suspension. For the reasons expressed

below, we determine to grant the motion and impose a six-month suspension.

Respondent was admitted to the New York bar in 1982 and the New Jersey bar in 1983. He has no history of discipline in New Jersey.

On September 24, 2012, respondent was placed on the list of ineligible attorneys for failure to pay the annual attorney assessment to the New Jersey Lawyers' Fund for Client Protection. He remains ineligible to date.

On April 23, 2010, the Departmental Disciplinary Committee for the First Judicial Department in New York (the Committee), served respondent with a notice and statement of charges. The charges stemmed from respondent's improper use of a springing, durable power-of-attorney (POA), used to transfer approximately $600,000 belonging to his uncle, Henry Isaacson, Esq., to respondent's own accounts, in the weeks preceding Isaacson's death. Respondent deceived Lee Snow, Esq., Isaacson's attorney, about his intended use of the POA, exceeded the scope of the POA, and failed to present sufficient medical documentation of Isaacson's incapacity to the institutions in which Isaacson's accounts were placed. Additionally, respondent failed to register with the Office of Court Administration (OCA) or pay

his New York registration fees from April 2008 through June 2010.

Respondent was charged with violations of DR 1-102(A)(4) (conduct involving dishonesty, fraud, deceit or misrepresentation) (count one); DR 1-102(A)(7) (conduct that adversely reflects on his fitness to practice) (counts two and three);[1] and New York RPC 8.4(d) (conduct prejudicial to the administration of justice) and Judiciary Law 468 by failing to register in a timely manner (count four).

On June 1, 2010, respondent answered the charges and admitted that he transferred money from Isaacson's accounts into his own accounts, but asserted that the POA authorized his action and that Isaacson privately granted him permission to take the money. Respondent denied that he deceived Snow and claimed that he had no duty to communicate honestly with Snow about his intended use of the POA. He contended that his failure to supplement the POA with a physician's letter attesting to Isaacson's incapacity was a mere oversight. He also argued that his failure to timely register should be excused because he knew of other attorneys whose registrations had lapsed for even

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[1] DR-102(A)(7) is not equivalent to any New Jersey RPC.

longer periods, but were permitted to register belatedly without disciplinary consequences.

On July 21, 2010, a hearing was held before a referee. Lee Snow, Esq., testified that he was an attorney admitted to practice in New York in 1982, and that Isaacson was a distant relative of his wife. Snow did estate work on Isaacson's behalf.

In August 2000, Snow met with Isaacson to update Isaacson's will, including changing the executors. Snow also made some suggestions to enhance the tax-planning features of the will. Isaacson was unmarried and had no children. He wanted each of his four siblings to take a twenty-five percent share in his estate. In the case of a predeceased sibling, the descendants or issue of that sibling would divide the parent's twenty-five percent share. The will was finalized in March 2001. Snow and respondent were named co-executors of the estate.

Additionally, Isaacson asked Snow to help him establish a trust for the children of one of his nephews. Snow then drafted a springing POA granting certain powers to respondent, should Isaacson later be determined incapacitated. Paragraph M of the POA specifically authorized the agent (respondent) to make gifts to the spouse, children, parents, and more remote decedents of the principal. The POA did not authorize the agent to make gifts

to himself. Isaacson never told Snow that he wished to change his estate planning to give additional money to respondent.

Isaacson became ill in November or December 2006. At the New York disciplinary hearing, respondent testified that he had been spending a lot of time with his uncle and that in December 2006, Isaacson had told him that, in appreciation for taking care of him, he wanted respondent to have a twenty percent share in the estate. The rest was to be divided according to his will.

In January 2007, Isaacson had a more serious health scare, which caused him to be hospitalized. Respondent testified that, while Isaacson was recovering from that incident, respondent had asked him how he intended to effectuate the twenty percent share in his estate that he had promised respondent. In response, Isaacson wrote on a yellow legal pad, "you have power of attorney." Respondent's nephew, Yisroel Steinberg, testified that he was present both when Isaacson originally told respondent that he wanted him to have a twenty percent share and later, when he wrote on the legal pad in the hospital.

Apparently, respondent did not realize, prior to the alleged conversation with Isaacson in the hospital, that he already had POA. In his testimony, Snow recalled that, in January 2007, respondent had contacted him, inquiring whether Isaacson had prepared a POA. Snow faxed respondent a copy of the

POA and explained that respondent had been named the agent thereto.

In February 2007, respondent told Snow that he needed the original POA to reactivate Isaacson's dormant bank accounts at HSBC. Snow sent the POA with a cover letter instructing respondent to use the POA only for the limited and intended purpose, and to return the original document to Snow after he was finished. Respondent did not tell Snow, however, that he planned to transfer funds from Isaacson's account to his own, or that Isaacson had expressed an intent to give money to respondent.

In March 2007, Shimon Oppenheim called Snow on behalf of an investment advisory fund to ask whether Oppenheim should honor respondent's instructions to transfer Isaacson's funds into a joint account with respondent, with right of survivorship. Snow advised the fund not to do so. He then cautioned respondent that his authority under the POA was very limited and did not include the right to change the title of Isaacson's individually held account with Oppenheim. Snow then provided respondent with examples of actions that were authorized under the POA, such as paying Isaacson's bills. Respondent told Snow that Isaacson had instructed him to make the change to the Oppenheim account. Snow again told respondent that he was not authorized by the POA to

make those kinds of changes. Several days later, in a letter to respondent, Snow confirmed his advice in respect of the limited use of the POA.

Isaacson died on March 11, 2007. His estate at the time was valued at $4.3 million dollars. Snow immediately began having difficulty contacting respondent. Snow arranged for Isaacson's mail to be forwarded to his office and learned that respondent had changed the title of accounts, from Isaacson individually to Isaacson and respondent jointly, at three financial institutions: Fidelity, Evergreen, and HSBC. By changing the title of the accounts to joint title with right of survivorship in himself, respondent had removed those assets from the estate that would pass under Isaacson's will.

Snow tried to arrange a meeting with respondent, who refused. In April 2007, however, Snow was able to reach respondent by phone. By that time, respondent had transferred approximately $600,000 into joint accounts and refused to return those funds to the estate. Nonetheless, respondent never

personally withdrew money from any of the accounts he had changed to joint accounts.[2]

During probate, Snow learned of other attempts by respondent to transfer money from the estate to himself from Isaacson's Merrill Lynch brokerage account. Those attempts had been unsuccessful.

After consulting a lawyer with probate experience, Snow petitioned the Kings County Surrogate's Court to admit Isaacson's will to probate, to appoint Snow as executor, to disqualify respondent as executor, and to appoint Yisrael Isaacson as co-executor because Yisrael stood in the same familial relationship as respondent. On May 27, 2008, after a trial, the Surrogate's Court granted the relief sought by Snow. Respondent complied and transferred the $600,000 to the estate.

On November 2, 2010, the referee issued a report in which he found neither respondent, nor his nephew, Steinberg, to be

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[2] Despite the OAE's contention that respondent never withdrew funds from the accounts, the report issued by the hearing panel after the referee issued his recommendation notes that respondent wrote three checks on Isaacson's account, totaling $30,000, payable to respondent's father, brother, and sister-in-law. It is unclear from the record what happened to these funds. Respondent claims in his answer to the disciplinary complaint that the funds were deducted from his brother's share as beneficiary of the estate.

credible witnesses. He found Steinberg "absolutely incredible" and noted that his physical demeanor and "evasiveness" were "palpable evidence of dishonesty." The referee also found that, although it was not "inherently unbelievable" that Isaacson wanted to favor respondent over the other heirs, the fact that both respondent and Isaacson were experienced attorneys supported the conclusion that Isaacson would have known to memorialize the gift in an "objective verifiable way," and that Isaacson would not have authorized respondent to make the gift by surreptitiously changing the ownership of three bank accounts, without Isaacson's express permission. The referee concluded, "[o]ne or the other of them surely would have realized the importance of taking even minimal steps to create a record of such a sizeable gift." The referee determined that respondent hid his intentions to transfer accounts from Snow on more than one occasion, and intentionally misled Snow as to his intentions for the POA to placate Snow and to permit respondent to "fly below the radar" to make the unauthorized transfers.

The referee concluded that respondent engaged in dishonesty, fraud, deceit and misrepresentation when he asked Snow to provide him with the POA, in violation of DR 1-102(A)(4); engaged in conduct that reflected adversely on his fitness to practice law when he failed to obtain a medical

certification stating that Isaacson was incapacitated, in violation of DR 1-102(A)(7); engaged in conduct that reflected adversely on his fitness to practice law when he used the POA to transfer title to approximately $600,000 of his uncle's funds to joint accounts, in violation of DR 1-102(A)(7); and failed to file the required registration statement, which constituted conduct prejudicial to the administration of justice, in violation of NY RPC 8.4(d). Thus, the referee sustained all four counts of the petition.

On December 22, 2010, the referee conducted a sanctions hearing. Respondent introduced testimony from five character witnesses and offered several character letters in mitigation. On February 8, 2011, the referee issued a report recommending that respondent be suspended for one year.[3]

On May 20, 2011, after hearing oral argument and reviewing the referee's report and recommendation, a hearing panel issued a report recommending a sanction of a two-year suspension. The hearing panel, however, recommended dismissal of charge two, which alleged that respondent had engaged in conduct that adversely reflected on his fitness as a lawyer when he used the

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[3] The report was erroneously dated February 8, 2010.

POA, without the requisite medical documentation. "In the Panel's view, despite our recommendation that Charge Two not be sustained, [r]espondent's egregious conduct warrants a greater sanction than that recommended by the Referee." Notably, the panel agreed with the referee that respondent was not authorized by Isaacson to take the money and, therefore, his intent was fraudulent. The panel, however, determined that this finding compels the conclusion that respondent testified falsely before the referee, and raises the inference that respondent also suborned the false testimony of Steinberg. The hearing panel recommended that respondent be suspended for two years.

Finally, on April 24, 2012, the New York Appellate Division issued an order and per curiam opinion affirming all of the charges and suspending respondent from the practice of law for a period of two years, effective May 24, 2012.

The OAE argued that respondent's unethical conduct in New York equated to violations of New Jersey RPC 8.4(c) and RPC 8.4(d), and recommended that we impose either a censure or a three-month suspension. Because respondent was not acting as Isaacson's attorney at the time he improperly transferred control of Isaacson's investment accounts to himself, the OAE noted, there is no RPC 1.8(c) violation ("[a] lawyer shall not solicit any substantial gift from a client, including a

testamentary gift, or prepare on behalf of a client an instrument giving the lawyer . . . any substantial gift unless the lawyer . . . is related to the client"). Under the rule, related persons include spouse, child, grandchild, parent, grandparent, or other relative or individual with whom the lawyer has a "close, familial relationship." However, the OAE maintained that, although not squarely applicable to this matter, the cases evaluating the conduct of lawyers who write wills for their clients leaving gifts to themselves, are nevertheless, instructive.

Relying on case law pertinent to RPC 1.8(c) violations, the OAE acknowledges that, when lawyers prepare wills in which they name themselves as beneficiaries, the discipline imposed typically is an admonition or a reprimand. See, In the Matter of Robert F. Spencer, DRB 08-068 (May 30, 2008) (admonition for attorney who prepared a will including himself as one of ten residuary beneficiaries; mitigating factors included no disciplinary history for over thirty years; attorney's disclaimer of his share in the estate once he realized there were objections; and his cooperation with ethics authorities); In the Matter of Kenneth H. Ginsberg, DRB 02-449 (February 14, 2003) (admonition for attorney who drafted a will for a close, longtime client, including a specific bequest of $10,000 for

himself; attorney was unaware that his conduct was prohibited by RPC 1.8(c)); In re Weil, 208 N.J. 179 (2011) (reprimand for attorney who prepared a will including a bequest to his wife, while entirely disinheriting the testator's sister; unblemished legal career of over thirty years); In re Van Dam, 187 N.J. 67 (2006) (reprimand for attorney who drafted a will in which he named himself as a contingent beneficiary); and In re Mangold, 148 N.J. 76 (1997) (reprimand for attorney who drafted a will and served as the executor of an estate while removing items such as furniture and stamps, allegedly based on oral permission granted to him by the testator).

The OAE argues for greater discipline, however, relying on a recently decided case, In re Torre, 223 N.J. 538 (2015). The Court suspended Torre for one year based on the egregious harm caused to a vulnerable, eighty-six-year-old victim. Id. at 546-47. Torre borrowed $89,250 from an elderly, unsophisticated client he had known for many years. The loan amounted to about seventy percent of the client's life savings. The debt was unsecured and Torre repaid only a fraction of it during the client's lifetime. In Torre, like here, the victim, M.D., signed a power of attorney in favor of Torre. Torre also prepared her will, and M.D. named him executor of her estate. Like Isaacson,

M.D. was physically diminished (legally blind) but mentally alert.

The Court in Torre considered "respondent's conduct against the backdrop of the serious and growing problem of elder abuse," noting that the "State's population is steadily aging," and citing supporting statistics. Id. at 547-48. The Court concluded that "[a]s the population ages, and more people suffer health problems, it is not uncommon for family members to seek the appointment of a guardian to oversee the finances of an incapacitated loved one." Id. at 548. The Court acknowledged that the "vast majority" of attorneys acting on behalf of an incapacitated person act "in a manner consistent with the highest ethical standards." Ibid. However, as more seniors have sought "help to manage their affairs, allegations of physical and financial abuse have also increased." Ibid. Citing the protection of the public as a laudable goal of the attorney disciplinary system, the Court suspended Torre for one year. Id. at 548-50.

Although respondent did not physically abuse his uncle, the OAE notes, it is clear that the authorities in New York concluded that he tried to take financial advantage of him. Respondent removed approximately $600,000 in assets from his uncle's estate (assets that belonged to the estate and should have proceeded by probate). Respondent's claim that his uncle

desired to convey a portion of his estate to respondent is contradicted by the testimony of Isaacson's attorney, Snow, and by the fact that Isaacson, as a successful attorney with assets worth 4.3 million dollars, would have been sophisticated enough to either change his will or to at least reduce to writing any intention to provide respondent with a gift beyond that of his share in the will.

Conversely, the OAE acknowledges that, since respondent returned control of all of Isaacson's accounts to the estate, and did not actually convert any of these funds to his own personal use, respondent's conduct is not nearly as serious as Torre's conduct and a lesser disciplinary sanction is appropriate. Respondent, however, took advantage of his uncle's condition to try to acquire a greater share for himself, conduct that was specifically criticized by the Court in Torre.

Finally, the OAE notes that respondent has no ethics history in New Jersey and that he reported his New York discipline to the New Jersey authorities. Thus, the OAE moves that respondent receive reciprocal discipline of a censure or a three-month suspension.

Following a review of the record, we determine to grant the OAE's motion for reciprocal discipline.

Reciprocal discipline proceedings in New Jersey are governed by R. 1:20-14(a)(4), which provides:

> The 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 on which the discipline in another jurisdiction was predicated that it clearly appears that:
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> (A) the disciplinary or disability order of the foreign jurisdiction was not entered;
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> (B) the disciplinary or disability order of the foreign jurisdiction does not apply to the respondent;
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> (C) the disciplinary or disability order of the foreign jurisdiction does not remain in full force and effect as the result of appellate proceedings;
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> (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;
>
> (E) the unethical conduct established warrants substantially different discipline.

A review of the record does not reveal any conditions that would fall within the ambit of subparagraphs (A) through (D). Paragraph E applies, however. In New Jersey, respondent's misconduct would merit discipline less severe than the two-year suspension imposed in New York.

Pursuant to R. 1:20-14(a)(5), "a final adjudication in another court, agency or tribunal, that an attorney admitted to

practice in this state . . . is guilty of unethical conduct in another jurisdiction as an attorney or otherwise in connection with the practice of law, shall establish conclusively the facts on which it rests for purposes of a disciplinary proceeding in this state." Thus, the "sole issue to be determined . . . shall be the extent of final discipline to be imposed." R. 1:20-14(b)(3).

Respondent's conduct violated New Jersey RPC 8.4(c) and RPC 8.4(d). Respondent made misrepresentations to Snow about his intended use of the POA and then intentionally exceeded the scope of the POA by fraudulently removing $600,000 from Isaacson's estate. Respondent was never vested with the power to change the title of Isaacson's financial accounts to joint accounts with a right of survivorship in himself. Thus, by his actions, he perpetrated a fraud against the banks that held these accounts and, more importantly, against the estate of Isaacson.

Further, although New York found respondent's conduct prejudicial to the administration of justice by failing to register and pay registration fees in New York for over two years, this conduct, without more, is not an ethics violation under the New Jersey Rules of Professional Conduct. Nevertheless, we find that respondent violated RPC 8.4(d), based

on the fact that Snow was forced to make an application to the Surrogate's Court in New York after respondent exceeded the scope of the POA and wrongfully removed $600,000 from the estate.

Because respondent neither prepared any of the testamentary documents at issue here nor arranged to be the recipient of testamentary gifts, those cases are not instructive in respect of the appropriate quantum of discipline for respondent's conduct. Rather, respondent committed fraud against the estate in his capacity as a relative of Isaacson, who had been entrusted to manage Isaacson's money through a springing POA.

The difficulty in determining the appropriate level of discipline in this case stems from the fact that respondent did not attempt to commit fraud in the course of a client representation. That said, that respondent's conduct did not involve the practice of law or arise from a client relationship does not excuse his serious transgressions or lessen the degree of sanction. Offenses that evidence ethics shortcomings, although not committed in the attorney's professional capacity, may, nevertheless, warrant discipline. It is well-established that the private conduct of attorneys may be the subject of public discipline. In re Musto, 152 N.J. 167, 173 (1997); In re

Hasbrouck, 140 N.J. 162, 167 (1995); In re Schaffer, 140 N.J. 148, 156 (1995). The basis for the rule is

> not a desire to supervise the private lives of attorneys but rather that the character of a man is single and hence misconduct revealing a deficiency is not less compelling because the attorney was not wearing his professional mantle at the time. Private misconduct and professional misconduct differ only in the intensity with which they reflect upon fitness at the bar. This is not to say that a court should view in some prissy way the personal affairs of its officers, but rather that if misbehavior persuades a man of normal sensibilities that the attorney lacks capacity to discharge his professional duties with honor and integrity, the public must be protected from him.
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> [In re Maqid, 139 N.J. 449, 452 (1995) (citing In re Mattera, 34 N.J. 259, 264 (1961)).]

Our efforts to identify cases involving conduct analogous to respondent's conduct were unsuccessful. At its essence, however, respondent made misrepresentations to effectuate a fraud in order to benefit himself financially.

In 2006, on a motion for reciprocal discipline from New York, an attorney was also charged with the New York equivalent of RPC 8.4(c) and (d). In re Becker, 187 N.J. 66 (2006). There, Becker represented a client in a personal injury matter that concluded with a settlement offer of $55,000 from the City of New York. Prior to that offer, however, his client had passed

away. Becker became aware of her death only when he reached out to her regarding the settlement. He learned from her son that she had passed away and had left heirs. Becker explained to her son that a costly and protracted estate claim had to be initiated. To avoid this, Becker altered settlement documents so his client's son could accept the settlement, and submitted them to the City without informing it that his client had died three years earlier. In the Matter of Avrohom Becker, DRB 06-044 (April 28, 2006).

Upon receiving the settlement check made payable to his deceased client, Becker instructed her son to sign her name to the check. Becker then endorsed the check with his signature stamp, deposited the check, took his fees from the settlement, and distributed the remainder to his client's son. Soon thereafter, Becker filed the required closing statement with the Office of Administration, referring to his client in the present tense and stating that she had been provided with her share of the settlement funds. Id. at 3.

We determined that Becker was guilty of numerous instances of misrepresentation. In determining the appropriate quantum of discipline, we focused on Becker's lack of candor to a tribunal. Citing cases ranging from an admonition to a three-year suspension, we determined that his misrepresentations were serious and repeated, and clearly distinguishable from the

admonition and reprimand cases. Becker engaged in dishonest conduct in several instances, including his alteration of the settlement documents, his submission of a misleading closing statement, and his deposit of a settlement check made payable to a deceased client. Id. at 11-12. Ultimately, we found that his conduct warranted the imposition of a suspension.

In determining the term of that suspension, we considered, among other cases, 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 for failure to amend his certification listing his assets; attorney had a prior private reprimand); and 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). Id. at 12.

In particular, we considered highly significant, the lack of benefit to Becker from his actions and compared it to the attorney in Forrest, who stood to gain from his actions by way of a larger fee. Here, although not by way of a fee, respondent's entire course of misrepresentations was intended for one purpose - to enrich himself at the expense of Isaacson's

estate and his legitimate heirs. We also considered that Becker had an unblemished record, expressed remorse, and was deeply involved in pro bono activities. Although, here, respondent also has no history of discipline, nothing in the record demonstrates remorse, contrition, or even an acknowledgement of wrongdoing on respondent's part. In fact, the hearing panel in New York characterized respondent's testimony as false and as raising the inference that he also suborned the false testimony of his nephew. Id. at 12.

Based on Becker and Forrest, the appropriate range of discipline is between a three-month and a six-month suspension. Under the totality of the circumstances, including respondent's apparent lack of contrition, we determine to impose a six-month suspension.

Members Boyer and Singer voted to impose a three-month suspension. Vice-Chair Baugh did not participate.

We further determine to require respondent to reimburse the Disciplinary Oversight Committee for administrative costs and actual expenses incurred in the prosecution of this matter, as provided in R. 1:20-17.

Disciplinary Review Board
Bonnie C. Frost, Chair

By: 
Ellen A. Brodsky
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Sanford F. Solny
Docket No. DRB 16-079

Argued: July 21, 2016

Decided: November 21, 2016

Disposition: Six-month suspension

Members	Six-month Suspension	Three-month Suspension	Did not participate
Frost	X		
Baugh			X
Boyer		X	
Clark	X		
Gallipoli	X		
Hoberman	X		
Rivera	X		
Singer		X	
Zmirich	X		
Total:	6	2	1

Ellen A. Brodsky
Chief Counsel