

**IN RE: J. RONALD FISHBEIN****NO. BD-2011-087****S.J.C. Order of Term Suspension entered by Justice Lenk on December 28, 2011.¹****Page Down to View Memorandum of Decision**

¹ The complete Order of the Court is available by contacting the Clerk of the Supreme Judicial Court for Suffolk County.

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPREME JUDICIAL COURT
FOR SUFFOLK COUNTY
NO: BD-2011-087

IN RE: J. RONALD FISHBEIN

MEMORANDUM OF DECISION

Bar counsel filed a petition for reciprocal discipline on August 25, 2011, pursuant to S.J.C. Rule 4:01, § 16, as appearing in 425 Mass. 1319 (1997), after the respondent was suspended for six months from the practice of law in Rhode Island. An order to show cause issued on August 26, 2011, directing the respondent to inform the court why the imposition of the identical discipline would be unwarranted. The respondent failed to respond within the required thirty days, but filed a response on November 30, 2011, in which he acknowledged that the sanction sought by bar counsel is appropriate. The respondent did not appear at the hearing before me on December 1, 2011.

1. Background and Procedural History. The respondent is an attorney duly admitted to the Bar of the Commonwealth on November 16, 1962.

On December 13, 2010, the Rhode Island Supreme Court ordered that the respondent be suspended from the practice of law in Rhode Island for six months, with particular conditions for

reinstatement. The respondent failed to notify the Board of Bar Overseers (board) or bar counsel about his Rhode Island suspension within ten days, as required by S.J.C. Rule 4:01, § 16(6).

The respondent's suspension was premised upon the following facts. In July 2004, Stephen Viscione retained the respondent to represent him in a potential claim against a former employer. By the end of 2005, after investigation of Viscione's cause of action, the respondent had concluded that Viscione was unlikely to prevail on this claim. The respondent did not relay this conclusion to Viscione. Instead, the respondent continued intermittent communication with his client, but took no further steps to pursue his claim. In 2008, Viscione began leaving the respondent numerous phone messages and letters asking about the status of the case. At a meeting soon thereafter, the respondent promised to pursue the case. Despite this promise, he took no further action on Viscione's behalf. As a result, in November, 2009, after the period of time in which to file a claim had expired, Viscione filed a complaint with the Rhode Island Supreme Court's disciplinary board (RI board). In his response to the complaint, the respondent acknowledged his failure to communicate with Viscione as well as the expiration of the time in which to file the case. He also refunded the retainer fee that Viscione had paid in 2004.

The RI board concluded that the respondent's conduct violated Rules 1.3¹ and 1.4² of the Rhode Island Supreme Court Rules of Professional Conduct and recommended a six month suspension with specific conditions for reinstatement. Given the respondent's two previous public censures for neglecting client matters, see In re Fishbein, 981 A.2d 1022 (R.I. 2009); In re Fishbein, 701 A.2d 1018 (R.I. 1997), the Rhode Island Supreme Court agreed with the recommendation of the RI board.

2. Appropriate Sanction. "A final adjudication in another jurisdiction that a lawyer has been guilty of misconduct . . . may be treated as establishing the misconduct for purposes of a disciplinary proceeding in the Commonwealth." S.J.C. Rule 4:01, § 16(5). Indeed, "[t]he judgment of suspension or disbarment shall be conclusive evidence of the misconduct unless . . . the procedure in the other jurisdiction did not provide reasonable notice or opportunity to be heard or there was significant infirmity of proof establishing the misconduct." S.J.C. Rule 4:01, § 16(3). Here, the respondent has not asserted any deficiency in the Rhode Island Supreme Court's decision or the RI

¹ Rhode Island Rule 1.3, entitled "Diligence," provides: "A lawyer shall act with reasonable diligence and promptness in representing a client."

² Rhode Island Rule 1.4, entitled "Communication," requires, in pertinent part, a lawyer to "keep the client reasonably informed about the status of the matter" and "explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation."

board's procedure. He has not argued that he was deprived of notice and an opportunity to be heard or that there was any infirmity of proof. I therefore accept the judgment of suspension in Rhode Island as conclusive evidence of the respondent's misconduct.

Out of deference to the disciplinary procedures in other States, this court "generally give[s] effect to the disciplinary decisions of another jurisdiction without undertaking the often difficult and protracted task of redoing the inquiry which has already been concluded there." Matter of Lebbos, 423 Mass. 753, 755 (1996), cert. denied, 520 U.S. 1275 (1997). This deference, however, "does not automatically lead to reciprocity." Id. Here, the Rhode Island Supreme Court suspended the respondent from the practice of law for six months. I "may impose the identical discipline" imposed in Rhode Island unless, among other considerations not relevant here, "the misconduct established does not justify the same discipline in this Commonwealth." S.J.C. Rule 4:01, § 16(3).

I conclude that, in these circumstances, the six month suspension "is not markedly disparate from what has been ordered in comparable cases" in the Commonwealth. In re Goldberg, 434 Mass. 1022, 1023 (2001), and cases cited. See Matter of Chambers, 421 Mass. 256, 257-261 (1995) (imposing six-month suspension for neglect, misrepresentations to client, and failure

to cooperate with bar counsel, as well as a prior history of neglect of client matters); Matter of Garabedian, 416 Mass. 20, 21-26 (1993) (imposing six-month sentence for neglect of client's case, repeated failure to cooperate with bar counsel, and having disciplinary history).

In 1997, the board adopted new guidelines for discipline in cases involving neglect or failure of zealous representation in Matter of Kane, 13 Mass. Att'y Discipline Rep. 321, 327-328 (1997). See In re Shaughnessy, 442 Mass. 1012, 1014 (2004) (recognizing that Matter of Kane adopted "new guidelines for discipline in cases involving neglect"). That decision clarified that "[s]uspension is generally appropriate for misconduct involving repeated failures to act with reasonable diligence, or when a lawyer has engaged in a pattern of neglect, and the lawyer's misconduct causes serious injury or potentially serious injury to a client or others." Matter of Kane, supra at 328. Here, the respondent's actions injured his client because, during the period of the respondent's five years of repeated neglect, the time in which a claim could have been filed in a Rhode Island court expired. Even though the respondent believed his client's claim lacked merit, "it was his duty to inform the client of that determination." In re Shaughnessy, supra at 1013. In the circumstances, the respondent's failure to do so deprived his client of the opportunity to pursue his case with another

attorney and thereby caused the client injury.

Matter of Kane, also recognized an attorney's "[p]rior disciplinary offenses" as an aggravating factor in determining the appropriate sanction. Matter of Kane, supra at 328. In this case, the respondent had received public reprimands in two previous cases for precisely the same misconduct -- neglect of client matters. Consistent with Matter of Kane, supra, this court has continued to impose similar suspensions in comparable cases. See Matter of Curcio, 23 Mass. Att'y Discipline Rep. 92 (2007) (imposing six-month suspension for neglect and misrepresentations to clients, aggravated by attorney's previous admonition for similar conduct); Matter of Roberts, 25 Mass. Att'y Discipline Rep. 534 (2009) (imposing a six-month suspension where attorney failed to pursue an appeal, failed to carry out his client's lawful directives, misrepresented his intentions to his client, failed to cooperate with bar counsel, and had previous admonition for similar neglect); Matter of White, 25 Mass. Att'y Discipline Rep. 622 (2009) (imposing six month suspension for failure to file an appeal as requested by client and failure to inform client of potential grounds for appeal in light of substantial disciplinary history for lack of diligence and poor client communications, but staying sentence as attorney had recently obtained audit of his office management practices); Matter of Bayless, 26 Mass. Att'y Discipline Rep. 30 (2010)

(imposing six-month suspension where attorney failed to pursue client's personal injury matter and misrepresented status of case, including aggravating factor that attorney had previously been admonished for prejudicing another client's case and mitigating factor that attorney had suffered a number of deaths in his family during the pendency of case). In light of the fact that the respondent has twice suffered public censures from the Rhode Island Supreme Court for neglect of client matters, suspension is warranted on the theory that "in the absence of mitigating factors, discipline should proceed in increments of escalating severity." Matter of Chambers, 421 Mass. 256, 260 (1995). The respondent himself concedes the appropriateness of the proposed sanction.

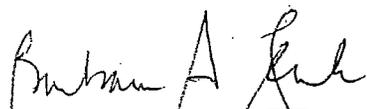
Additionally, I decline to make the respondent's suspension retroactive to the effective date of the Rhode Island suspension because he failed to notify bar counsel or the board of the discipline against him, in violation of S.J.C. Rule 4:01, § 16(6). See Matter of Sheridan, 449 Mass. 1005, 1008 (2007), and cases cited.

Finally, I note that, in cases involving reciprocal discipline, it is the court's usual practice to condition reinstatement in the Commonwealth upon prior reinstatement in the jurisdiction in which the discipline originated. See, e.g., Matter of Ritzo, 26 Mass. Att'y Discipline Rep. 555 (2010);

Matter of Carey, 25 Mass. Att'y Discipline Rep. 89 (2009); Matter of Anderson, 23 Mass. Att'y Discipline Rep. 14 (2007). I impose such a condition here.

3. Disposition. An order shall enter suspending the respondent from the practice of law in the Commonwealth for a period of six months, with reinstatement conditioned upon the respondent's prior reinstatement in Rhode Island.

By the Court



Barbara A. Lenk
Associate Justice

Entered: December 28 2011