SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 10-056
District Docket No. XIV-2008-323E

IN THE MATTER OF

LEONARD W. KINGSLEY

AN ATTORNEY AT LAW

Decision

Argued: April 15, 2010

Decided: July 7, 2010

Walton W. Kingsbery, III appeared on behalf of the Office of Attorney Ethics.

Respondent appeared pro se.

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

This matter came before us on a motion for reciprocal discipline filed by the Office of Attorney Ethics ("OAE"), following the Supreme Court of Delaware's June 4, 2008 disbarment of respondent for engaging, and assisting another, in

the unauthorized practice of law and knowingly disobeying a court order.[1] The OAE seeks a one-year suspension for this misconduct. For the reasons expressed below, we determine to impose a censure on respondent.

Respondent was admitted to the Pennsylvania bar in 2003 and to the New Jersey bar in 2006. At the relevant time, in 2006, he maintained an office for the practice of law in West Collingswood and, at some point, in West Chester, Pennsylvania.

On August 8, 2007, the Office of Disciplinary Counsel of the Supreme Court of Delaware ("ODC") filed a petition for discipline against respondent. The action arose out of a separate disciplinary proceeding that the ODC had instituted, in

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[1] In Delaware, disbarment is not permanent. However, a disbarred attorney may not apply for reinstatement "until the expiration of at least five years from the effective date of the disbarment." Rule 22(c) of the Delaware Lawyers' Rules of Disciplinary Procedure. We note that, at the time of his disbarment, respondent was not a member of the Delaware bar. Nevertheless, in disbarring respondent, the Supreme Court of Delaware explained that, "in the context of an attorney not admitted in Delaware," disbarment means "the unconditional exclusion from the admission to or the exercise of any privilege to practice law in this State."

January 2006, against a non-lawyer, public accountant Ralph V. Estep ("Estep"), for the unauthorized practice of law ("UPL").

In the Delaware disciplinary matter, respondent was charged with having violated four Delaware RPCs. First, the ODC alleged that respondent violated Delaware RPC 5.5(a), which prohibits a lawyer from practicing law "in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction, or assist[ing] another in doing so." Specifically, the ODC alleged that respondent "draft[ed] estate planning documents [wills, trusts, powers of attorney, and deeds] for more than seventy-five (75) Delaware residents and assist[ed] Estep in giving advice to Delaware residents on estate planning matters." Delaware RPC 5.5(a) is equivalent to New Jersey RPC 5.5(a)(1) and (2).

Second, the ODC alleged that respondent violated Delaware RPC 5.5(b)(1), which prohibits a lawyer who is not admitted to practice in Delaware from "establish[ing] an office or other systematic and continuous presence in this jurisdiction for the

practice of law."[2] Respondent allegedly violated the rule "by maintaining a systematic and continuous legal presence in Delaware, establishing an office in Delaware for the practice of law by identifying the location of his practice as 'The Kingsley Law Firm,' 1308 Kynlyn Drive, Wilmington, Delaware and by working and practicing law in Estep's office at 508 Main Street in Wilmington, Delaware." For the same reason, respondent was charged with having violated Delaware RPC 5.5(b)(2), which prohibits a lawyer who is not admitted to the Delaware bar from holding out to the public, or otherwise representing, that he or she is admitted to practice law in the State. These Delaware RPCs have no identical New Jersey equivalents, although RPC 5.5(c)(4) addresses narrower situations.[3]

Finally, respondent was charged with having violated Delaware RPC 3.4(c), which prohibits a lawyer from "knowingly disobeying an obligation under the rules of a tribunal, except

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[2] The rule does not apply when the conduct is "authorized by the[] Rules or other law," which was not the case here.

[3] RPC 5.5(c)(4) states that a lawyer not admitted in New Jersey, but who is permitted to practice in New Jersey under the circumstances enumerated in RPC 5.5(b), may not hold himself or herself out as being admitted to practice in New Jersey.

for an open refusal based on an assertion that no valid obligation exists." According to the ODC, respondent violated this rule when he drafted estate planning documents and advised Estep's clients, "in knowing violation" of an October 30, 2006 cease and desist order entered against Estep in his UPL proceeding. Delaware RPC 3.4(c) is identical to New Jersey RPC 3.4(c).

After respondent was served with the ODC's complaint, in August 2007, he neither filed an answer nor requested an extension of time within which to do so. Further, he did not object to the ODC's request that the Board of Professional Responsibility of the Supreme Court of Delaware ("the Delaware Board") deem admitted the allegations of the ethics complaint, on the ground that he had failed to file an answer. Thus, on September 19, 2007, the Delaware Board determined to deem the allegations admitted and scheduled a hearing on the issue of discipline. Respondent's subsequent challenge to Delaware's jurisdiction was rejected by the Delaware Board. He did not pursue this argument before the Delaware Supreme Court. Counsel for the ODC and respondent, pro se, participated in the sanctions hearing.

The facts in this decision are taken from the Delaware Board's decision, which was based on the admitted allegations of the complaint, the testimony at the sanctions hearing, and the contents of a June 6, 2006 document executed by Estep and the ODC, as part of Estep's UPL proceeding, called "Admitted Facts and Admissions of Conduct Constituting the Unauthorized Practice of Law" ("the Admitted Facts").

Three time periods are at issue in this case: February through June 2006; June through October 30, 2006; and October 30, 2006 through the fall of 2007.

January Through June 2006

Respondent, a member of the New Jersey and Pennsylvania bars, has never been a member of the Delaware bar. From February 27 until June 30, 2006, he was employed by Estep, who had an office located at 508 Main Street, Wilmington, Delaware, at an annual salary of $85,000. As stated previously, Estep, an accountant, was not authorized to practice law in the State of Delaware.

During this four-month period, Estep's routine practice was to meet with his clients to discuss estate planning, with no Delaware attorney present. Estep took notes at these meetings,

which he then sent to respondent. Based on their contents, respondent prepared estate planning documents for approximately thirty individuals and couples who resided in Delaware. Respondent sent drafts of these documents to Delaware attorney John Bialecki for his review. Respondent incorporated Bialecki's changes, if any, and forwarded the completed documents to Estep, who, in turn, presented them to the clients.

At the Delaware hearing, respondent claimed that he was present at Estep's meetings with ten to twenty clients. He also claimed that he took notes during these meetings "to make sure that [Estep's] notes accurately reflected what I felt was the testimony as given forth by the clients."

Among other things, in the June 2006 Admitted Facts, Estep agreed that "the drafting of wills and trusts by a non-lawyer who is not authorized to practice law by the Delaware Supreme Court constitutes the unauthorized practice of law and that he engaged in the unauthorized practice of law by drafting wills and trusts."

According to ODC lawyer Patricia Bartley-Schwartz, as part of her investigation in the Estep UPL proceeding, she called respondent, in June 2006, and warned him that he was engaging in the unauthorized practice of law and assisting Estep in doing

so. Schwartz suggested to respondent that he cease employment by Estep, as respondent was "going to seriously jeopardize [his] ability to be a Delaware lawyer."

June Through October 30, 2006

Respondent testified that, based on his conversation with Schwartz, he understood that the ODC's primary objection to respondent's practice was that "it was unacceptable to have a Delaware attorney simply review [documents] without their [sic] actually being face-to-face time between the Delaware attorney and the client." To rectify the problem, Estep and respondent modified their arrangement by terminating their employment relationship and, instead, entering into a retainer agreement, whereby respondent would represent Estep, in exchange for a monthly payment of $8000. Under this new arrangement, respondent no longer participated in Estep's initial interviews with some of his clients, but continued to draft estate planning documents for them, based on Estep's notes. The difference now

was that, up through August 2006,[4] Estep was to arrange for Bialecki to be present when Estep's clients came into Estep's office to sign the completed documents, which Bialecki was to present to them. Respondent believed that this arrangement was "sufficient under Delaware law."

Pursuant to the retainer arrangement with Estep, respondent prepared legal documents for approximately twenty individuals and couples and forwarded them to Estep for presentation to the Delaware clients, in the presence of either Bialecki or McCracken. According to the Delaware Board, respondent made no effort to "determine that the new arrangement was working to ensure that Delaware counsel met with the clients to ensure that the documents he prepared complied with their wishes."

Also, as part of the new retainer arrangement with Estep, respondent opened "The Kingsley Law Firm," in West Chester, Pennsylvania. In a listing with the Philadelphia Estate Planning Council ("the Council"), respondent identified his home address, 1308 Kynlyn Drive, Wilmington, Delaware, as the address

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[4]After August 2006, Bialecki was replaced by another Delaware attorney, McCracken.

for "The Kingsley Law Firm." This address, however, was not located on respondent's letterhead or business card and was given to the Council only for the purpose of identifying where respondent preferred to receive mailings.

Sometime in August or September 2006, respondent learned that Estep had been convicted of a felony for "terroristic threatening involving a gun." Thereafter, respondent no longer named Estep as the personal representative for the clients in the estate planning documents. However, he did not bring this issue to the attention of clients for whom he previously had named Estep as the personal representative. Respondent acknowledged that this was a failing on his part, but, he claimed, he lacked access to Estep's database, as he was no longer an employee.

October 30, 2006 Through The Fall Of 2007

On October 30, 2006, the Delaware Supreme Court entered an order approving the Admitted Facts in the Estep matter. The order required Estep "to cease and desist the unauthorized practice of law immediately."

After the entry of the order, respondent continued to draft estate planning documents for Estep's Delaware clients. On

occasion, he met with them to discuss their estate plans. Moreover, between October 30 and November 13, 2006, Estep met with clients Easter Burch, Bruce Abbott, Vivienne Titus, and Yolanda and William Welch to have them execute documents that respondent had prepared. The Delaware Board found that, by giving legal advice to Estep's clients and by drafting estate planning documents for them, after the entry of the October 30, 2006 cease and desist order, respondent violated RPC 3.4(c).

On November 9, 2006, the Delaware Supreme Court appointed attorney Peter Gordon as receiver for Estep's practice. Gordon collected 283 files from Estep's office and advised all of Estep's clients of the cease and desist order and the finding that Estep had engaged in the unauthorized practice of law. He also informed each client that he or she could meet for one hour with a member of the Delaware Bar to review their estate planning documents, free of charge.

When Estep received a letter from Wachovia Bank stating that it intended to limit his authority to manage certain trust accounts, Estep decided to accept respondent's December 2006 recommendation that he resign as trustee, in favor of respondent, who prepared the documentation necessary to carry out that decision. Funds from the accounts of trusts maintained

in Delaware for Delaware clients were moved to a trust account in Pennsylvania, controlled by respondent.[5]

At the hearing before the Delaware Board, respondent testified that he received no compensation for his service as trustee and that he was agreeable to resigning as trustee, if any of the beneficiaries objected. Respondent stated that he terminated his relationship with Estep in either September or October 2007.

The Delaware Board found that respondent had "violated duties to the public, to clients, to the legal system and to the profession"

> by preparing wills, trusts, deeds and other estate planning documents for citizens of Delaware, many of whom he never met, even though he was not licensed to practice in Delaware. The record reflects that he relied upon notes of an accountant, Estep, who interviewed clients and sent Respondent his notes. [Respondent] was not aware that any Delaware lawyer met with the clients prior to his drafting . . . estate planning documents. Moreover, when he sent his drafts to Delaware attorneys for review prior to the clients' meeting with Mr. Estep for review and signature, there is no

[5] The Delaware Board found no evidence that either respondent or Estep had misused the trust funds.

> evidence that he sent the notes. Further, the record reflects that following the consent by Estep on June 6, 2006 to a Cease and Desist Order with the ODC, [Estep] and Kingsley arranged for a Delaware attorney also to be present with Estep for the clients to sign the documents, but the Delaware attorney played no meaningful role.
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> [Ex.A,Background,§D,¶3g1,p.11-p.12.][6]

In what was apparently a case of first impression in Delaware, the Delaware Board concluded that "the Delaware Supreme Court would find that a person drafting estate planning documents to meet the requirements of Delaware law for Delaware clients based on notes and recommendations from a non-lawyer and without any substantive review of the notes and interview of the clients by a Delaware attorney to ascertain their wishes would constitute the practice of law."

Although the Delaware Board presumably concluded that respondent had engaged in the unauthorized practice of law and had assisted Estep in doing so from February 27 until October 30, 2006, the Delaware Board found that respondent's violations

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[6] "Ex.A" refers to the opinion of the Delaware Board, dated March 14, 2008.

were not knowing, because, at the time, the question of whether "the practice of a non-Delaware lawyer drafting estate planning documents to be reviewed by a Delaware lawyer" constituted the unauthorized practice of law "was . . . unsettled." [7] Nevertheless, the Delaware Board noted,

> by preparing estate planning documents for Estep's clients prior to October 30, 2006 without proper supervision by a Delaware attorney, Respondent failed to heed a substantial risk that his practice would be deemed to constitute the unauthorized practice of law and/or the assistance of a non-lawyer in the unauthorized practice of law. A reasonable lawyer in his position – drafting estate planning documents as a non-Delaware lawyer for Delaware clients where he knew the question of the propriety of such activity in Delaware was unsettled – would have taken greater steps to ensure that a Delaware attorney exercised appropriate supervision.
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> [Ex.A,Background,§D,¶3g2,p.11.]

With particular respect to respondent's conduct, after his June 2006 conversation with Schwartz and up through October 30, 2006, the date of the court order, the Delaware Board found the

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[7] The Delaware Board also concluded that respondent did not maintain a systematic and continuing legal practice in Delaware (RPC 5.5(b)(1)).

ODC had failed to establish by clear and convincing evidence that respondent knew that Bialecki and McCracken had "fail[ed] to play a meaningful role when they met with the clients prior to signing the documents drafted by [him]." The Delaware Board stated that, if respondent had done nothing to change his practice after his conversation with Schwartz, it might have reached a different conclusion as to whether his violations were committed knowingly.

In sum, the Delaware Board concluded that the ODC had failed to prove, by clear and convincing evidence, that respondent had knowingly violated Delaware RPC 5.5(a) (engaging, or assisting another, in the unauthorized practice of law) or Delaware RPC 5.5(b)(1) (maintaining a systematic and continuous legal presence in Delaware) between February 27 and October 30, 2006, the date of the court order.

The Delaware Board also found that respondent had "negligently identified his law firm as having a Delaware address in violation of RPC 5.5(b)(2), without knowingly or consciously intending to market himself to the public as being a Delaware law firm."

Finally, the Delaware Board acknowledged that the October 30, 2006 cease and desist order did not apply to respondent.

Nevertheless, the Delaware Board accepted the "deemed admission" that respondent had knowingly violated the order, by drafting estate planning documents and by giving legal advice to Estep's clients, after the entry of the order.

The Delaware Board accepted the ODC's recommended sanction, that is, disbarment, citing, in aggravation, respondent's dishonest or selfish motive and his pattern of multiple offenses. In mitigation, the Delaware Board considered respondent's inexperience as a lawyer and the absence of a prior disciplinary record.

On June 4, 2008, the Supreme Court of the State of Delaware ordered that respondent be disbarred. Unlike the Delaware Board, the court found that Kingsley established a "systematic and continuous presence" in Delaware for the practice of law in violation of the Professional Conduct Rules and his duties owed as a professional. The court noted:

> Kingsley was on notice that his activities with respect to rendering legal advice on Delaware law were in violation of the Rules. After he established a practice in West Chester, Pennsylvania, he continued to practice law in Delaware. Estep retained Kingsley and paid a regular retainer for Kingsley to draft wills, trusts, powers of attorney, and deeds for Estep's Delaware clients, and on occasion, meet with them to

> discuss estate planning matters as he previously had done.
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> [Ex.B,p.9-p.10.][8]

Citing the ABA Standards for Imposing Lawyer Sanctions, the court agreed that disbarment was warranted. In a footnote, the Delaware court made reference to its decision in the Estep UPL proceeding, where it stated that Estep and respondent's retainer agreement "constitute[d] a transparent, nefarious attempt to circumvent the Cease and Desist Order and continue with "business as usual." According to the court, respondent's "knowing violation of the Estep Cease and Desist Order violated his ethical duties and seriously undermined the legal system."

On March 17, 2009, the Supreme Court of Pennsylvania imposed reciprocal discipline on respondent and disbarred him. Respondent did not report either the Delaware or the Pennsylvania disciplinary actions to the OAE.

Following a review of the record, we determine to grant the OAE's motion for reciprocal discipline. Pursuant to R. 1:20-14(a)(5), another jurisdiction's finding of misconduct shall

[8] "Ex.B" refers to the order of the Supreme Court of the State of Delaware, dated June 4, 2008.

establish conclusively the facts on which it rests for purposes of a disciplinary proceeding in this state. We, therefore, with one exception, adopt the findings of the Delaware Board, which were approved by the Delaware Supreme Court.

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

> 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; or
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> (E) the unethical conduct established warrants substantially different discipline.

Subsection (E) applies to the facts of this case because neither respondent's unauthorized practice of law in Delaware

nor his assisting another in the unauthorized practice of law would warrant disbarment in New Jersey.

We accept the Delaware court's findings that respondent negligently engaged in the unauthorized practice of law and negligently assisted Estep in the unauthorized practice of law, between February 27 and October 30, 2006. Although respondent was not admitted to the Delaware bar, he nevertheless drafted estate planning documents for Estep's Delaware clients. Moreover, he assisted Estep in the unauthorized practice of law by preparing documents based solely on Estep's notes and then by failing to ensure that the completed documents complied with the clients' wishes.[9] The Delaware court found, however, that respondent's conduct was "not knowing" because, at the time, the issue of whether a non-Delaware attorney's preparation of documents to be reviewed by a Delaware attorney constituted the unauthorized practice of law was not settled.

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[9] Notably, the Delaware disciplinary authorities criticized respondent not only for engaging in the unauthorized practice of law, but for doing so in a manner that could have prejudiced Estep's clients.

As to the October 30, 2006 cease and desist order entered in the Estep matter, the Delaware Board and the Delaware Supreme Court found that, even though respondent was not subject to it, he knowingly violated RPC 3.4(c) when, after the entry of that order, he continued providing legal services for Estep's clients. We cannot agree. The order did not apply to respondent. More appropriately, as will be discussed below, his continued activities on behalf of Estep's clients, knowing that the October 2006 order had been entered against Estep, constituted continuing assistance to Estep's unauthorized practice of law. In short, because Estep continued with his prior practices, respondent assisted Estep in violating the court order.

In general, reprimands are imposed on New Jersey attorneys who practice law in jurisdictions where they are not licensed. See, e.g., In re Bronson, 197 N.J. 17 (2008) (attorney practiced law in New York, a state in which he was not admitted, failed to prepare a writing setting forth the basis or rate of his fee in a criminal matter, and failed to disclose to a New York court that he was not licensed there); In re Haberman, 170 N.J. 197 (2001) (on behalf of his New York/New Jersey law firm, attorney appeared in court in New Jersey, where he was not admitted, and

did not advise the court that he was not admitted to practice in New Jersey; the attorney also appeared as counsel at a deposition taken in connection with a Superior Court matter; the attorney's pro hac vice privileges in New Jersey also were suspended for one year); In re Benedetto, 167 N.J. 280 (2001) (attorney pleaded guilty to the unauthorized practice of law, a misdemeanor in South Carolina; the attorney had received several referrals of personal injury cases and had represented clients in South Carolina, although he was not licensed in that jurisdiction; prior private reprimand for failure to maintain a bona fide office in New Jersey); In re Auerbacher, 156 N.J. 552 (1999) (although not licensed in Florida, attorney drafted a joint venture agreement between her brother and another individual in Florida and unilaterally designated herself as sole arbitrator in the event of a dispute; the attorney admitted to Florida disciplinary authorities that she had engaged in the unauthorized practice of law in that State); and In re Pamm, 118 N.J. 556 (1990) (attorney filed an answer and counterclaim in a divorce proceeding in Oklahoma, although she was not admitted to practice in that jurisdiction; the attorney also grossly neglected the case and failed to protect her client's interest upon terminating the representation; in a separate matter, the

attorney obtained a client's signature on a blank certification; in a third matter, the attorney engaged in an improper ex parte communication with a judge). But see In the Matter of Harold J. Pareti, DRB 09-028 (June 25, 2009) (non-New Jersey attorney carried out three-to-four real estate closings in New Jersey per month; in imposing only an admonition, we considered the attorney's lack of knowledge that his actions were in violation of the rules regulating the profession in New Jersey).

Suspensions were imposed in two cases, but other, serious infractions were also present. See, e.g., In re Lawrence, 170 N.J. 598 (2002) (in a default, the attorney received a three-month suspension for practicing in New York, where she was not admitted to the bar; the attorney also agreed to file a motion in New York to reduce her client's restitution payments to the probation department, failed to keep the client reasonably informed about the status of the matter, exhibited a lack of diligence, charged an unreasonable fee, used misleading letterhead, and failed to cooperate with disciplinary authorities) and In re Davidoff, 156 N.J. 418 (1998) (two-year suspension for attorney who practiced law in New York where he was not admitted, negligently misappropriated clients' trust funds, made misrepresentations to his clients about the status

of their litigation and about his status as a New York attorney, and failed to maintain a bona fide office and trust and business accounts in New Jersey).

Here, the record does not contain any evidence that respondent held himself out to be a Delaware attorney, either to the public at large or to Estep's clients. Between February and June 2006, respondent was Estep's employee. At best, his conduct was akin to that of the attorney in Auerbacher, who drafted a contract between residents of a state where she was not licensed to practice law. That attorney received a reprimand.

Moreover, between June and October 2006, respondent attempted to correct what he mistakenly perceived to be the aspect of his arrangement with Estep that rendered it the unauthorized practice of law. Thus, like the attorney in Pareti (admonition), respondent lacked the intent to violate the RPCs that govern the unauthorized practice of law.

Respondent, however, also assisted Estep in the unauthorized practice of law by enabling Estep to assess the clients' estate planning needs and then failing to ensure that the documents that he had prepared actually complied with the clients' wishes.

As of October 30, 2006, the Delaware Supreme Court considered Estep to be engaged in the unauthorized practice of law and entered the cease and desist order. Nevertheless, after that date, Estep met with at least four clients and discussed their estate plans with them. For his part, respondent drafted estate planning documents for these clients after the entry of the order and even met with some of them to discuss their estate plans. The Delaware Board found that, by this conduct, respondent knowingly assisted Estep in the unauthorized practice of law.

When an attorney assists a non-lawyer in the unauthorized practice of law and also commits other violations of the RPCs, the discipline ranges from a reprimand to a lengthy suspension. See, e.g., In re Bevacqua, 174 N.J. 296 (2002) (reprimand for attorney who assigned an unlicensed lawyer to prepare a client for a deposition and to appear on the client's behalf; the attorney committed other violations, including gross neglect, pattern of neglect, and lack of diligence; multiple mitigating factors considered, including lack of disciplinary history, the attorney's inexperience as a lawyer, and the presence of poor judgment, rather than venality); In re Ezor, 172 N.J. 235 (2002) (reprimand for attorney who knowingly assisted his father, a

disbarred New Jersey attorney, in presenting himself as an attorney in a New Jersey litigation); In re Belmont, 158 N.J. 183 (1999) (reprimand for attorney who assisted his partner, a Pennsylvania attorney, in the unauthorized practice of law by permitting him to settle eight personal injury cases in New Jersey; the attorney also improperly calculated his contingent fee on the recovery, improperly endorsed his clients' names on settlement checks in five cases, failed to deposit the settlement checks in a trust account in New Jersey, failed to maintain a bona fide office in New Jersey, and failed to turn over a file to a client); In re Gottesman, 126 N.J. 376 (1991) (reprimand imposed on attorney who divided his legal fees with a paralegal and aided in the unauthorized practice of law by allowing the paralegal to advise clients on the merits of claims and permitting the paralegal to exercise sole discretion in formulating settlement offers); In re Silber, 100 N.J. 517 (1985) (reprimand for attorney who failed to inform the court that his law clerk had made an ultra vires appearance; contrary to the attorney's instructions, the law clerk took it upon herself to represent a client at a hearing; although the attorney chastised the law clerk, he failed to advise the court of the incident; later, when the attorney received a proposed

form of order showing the law clerk as the appearing attorney, he failed to contact the court to correct the misrepresentation); In re Pomper, 197 N.J. 500 (2009) (censure for attorney who sent his paralegal with his client to a hearing, where the paralegal identified herself as an attorney, entered an appearance on the record, allowed herself to be addressed as "counselor," and acted as an advocate for the client; respondent had a prior reprimand and an admonition); In re Gonzales, 189 N.J. 203 (2007) (three-month suspension for an attorney who egregiously "surrendered every one of her responsibilities" to the office manager and bookkeeper by permitting the bookkeeper to use a signature stamp on trust account checks and the office manager/paralegal to interview clients, execute retainer agreements in the attorney's name, and prepare and execute pleadings and releases; the office manager/paralegal also attended depositions and appeared in municipal court on behalf of the attorney's clients, among other things; the attorney also compensated the office manager based on his work as "a lawyer;" once the attorney learned of the officer manager/paralegal's actions, she contacted the proper authorities and participated in an investigation that led to his arrest); In re Chulak, 152 N.J. 553 (1998) (three-month

suspension for attorney who allowed a non-lawyer to prepare and sign pleadings in the attorney's name and to be designated as "Esq." on his attorney business account; the attorney then misrepresented to the court his knowledge of these facts); In re Kronegold, 197 N.J. 22 (2008) (on motion for reciprocal discipline from New York, six-month suspension imposed on attorney who assisted a disbarred lawyer in the unauthorized practice of law; prior reprimand for practicing while ineligible; in the same matter, the attorney also received a separate six-month suspension for using a runner to solicit one personal injury case and failing to file required documents with the court in more than seventy cases); In re Cermack, 174 N.J. 560 (2003) (on motion for discipline by consent, attorney received a six-month suspension for entering into an agreement with a suspended lawyer that allowed him to continue to represent clients, although the attorney appeared as the attorney of record and handled court appearances; in some cases, the attorney took over the suspended lawyer's cases with the clients' consent and with the understanding that the cases would be returned to the suspended lawyer upon his reinstatement); In re Carracino, 156 N.J. 477 (1998) (six-month suspension for attorney who entered into a law partnership agreement with a

non-lawyer, agreed to share fees with the non-lawyer, engaged in a conflict of interest, displayed gross neglect, failed to communicate with a client, engaged in conduct involving misrepresentation, and failed to cooperate with disciplinary authorities); In re Moeller, 177 N.J. 511 (2003) (one-year suspension for attorney who entered into an arrangement with a Texas corporation that marketed and sold living trusts to senior citizens; the attorney filed a certificate of incorporation in New Jersey on behalf of the corporation, was its registered agent, allowed his name to be used in its mailings, and was an integral part of its marketing campaign, which contained many misrepresentations; although the attorney was compensated by the corporation for reviewing the documents, he never consulted with the clients about his fee or obtained their consent to the arrangement; he also assisted the corporation in the unauthorized practice of law, misrepresented the amount of his fee, and charged an excessive fee); In re Rubin, 150 N.J. 207 (1997) (one-year suspension in a default matter for attorney who assisted a non-lawyer in the unauthorized practice of law, improperly divided fees without the client's consent, engaged in fee overreaching, violated the terms of an escrow agreement, and misrepresented to the clients both the purchase price of a house

and the amount of his fee); and In re Garcia, 195 N.J. 164 (2007) (on motion for reciprocal discipline from Pennsylvania, fifteen-month suspension imposed on attorney who assisted her husband, a suspended attorney, in the unauthorized practice of law; the attorney used misleading letterhead and the law firm name Feingold Feingold & Garcia, thus implying that her husband continued to practice law with the firm; the attorney also lacked candor to a tribunal, when she told two judges that she and her husband operated different law firms and when she told a third judge that the law firm of Feingold Feingold & Garcia included respondent and Feingold's niece; the attorney also filed frivolous lawsuits and knowingly made false allegations about judges).

In all of these cases, except Moeller, attorneys who violated RPC 5.5(a)(2) assisted someone who was holding himself or herself out as a licensed attorney. Perhaps this explains why, in this case, the OAE recommended a one-year suspension, which was meted out to attorney Moeller. The OAE argued:

> In the present case, the violations most closely mirror those found in In re Moeller, supra [sic]. Like the attorney in Moeller, the respondent in this case violated RPC 5.5(a)(2) by assisting a person who is not a member of the bar in the performance of activity that constituted the

> unauthorized practice of law. In both cases, the non-attorney's practice of law was not occasional or sporadic; it was an ongoing business. Moreover, the respondent also violated RPC 5.5(a)(1) by himself practicing law in a jurisdiction (Delaware) where he was not admitted to practice. In addition, respondent knew that a Cease and Desist Order had been entered prohibiting Estep from practicing law in Delaware, but continued to aid Estep in giving estate planning advice and preparing estate planning documents for Delaware residents. In doing so, he violated RPC 3.4(c).
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> Finally, respondent's failure to notify New Jersey of the disciplinary action taken against him by Delaware in 2008 or by Pennsylvania in 2009 should operate as an aggravating factor, to enhance the disciplinary sanction.
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> [OAEb10-OAEb11.][10]

We are unable to agree with the OAE that respondent's conduct was comparable to Moeller's. In Moeller, American Estate Services, Inc. ("AES"), a Texas corporation, marketed and sold living trusts to senior citizens. AES employees obtained information from the "clients" and, presumably, created the documents, which were reviewed and corrected by Moeller, after

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[10] "OAEb" refers to the OAE's brief to us, dated February 8, 2010.

he had confirmed the information obtained by the AES employee. Moeller received $100 per trust.

After some time, Moeller and AES modified their relationship. AES agreed to assist respondent in a direct mail marketing campaign, using its database, including legal forms. A system was set up so that the "client" would have a telephone meeting with Moeller, the attorney.

The only similarity between the arrangement in Moeller and the arrangement here is that, like AES, Estep did not hold himself out as an attorney. Unlike the situation in Moeller, however, Estep was not fishing for clients for himself or for respondent. Rather, respondent was assisting Estep in providing estate planning documents for Estep's pre-existing clients. Moreover, unlike AES, Estep, a non-lawyer did not draft the legal documents; respondent did. Further, respondent never held himself out to be the attorney for Estep's clients. Finally, and perhaps most significantly, the arrangement between Estep and respondent was not part of a massive marketing scheme designed to benefit them. In light of the above, in our view, a one-year suspension, the discipline meted out in Moeller, would be excessive in this case.

As to the other cases involving attorneys who assisted others in the unauthorized practice of law, those attorneys were actually aiding and abetting others in their passing themselves off to the public as lawyers. This was not the case here. Estep was not designated as an attorney on respondent's business account, Chulak, supra, 152 N.J. 553 (three-month suspension); respondent did not enter into either a law partnership and share fees with him, Carracino, supra, 156 N.J. 477 (six-month suspension), or a secret agreement to permit Estep to practice law, Cermack, supra, 174 N.J. 560 (six-month suspension); and he did not engage in a vast scheme designed to benefit him and Estep, to the detriment of Estep's clients, Moeller, supra, 177 N.J. 511 (one-year suspension), and Rubin, supra, 150 N.J. 207 (one-year suspension). Respondent simply drafted estate planning documents based on Estep's notes and then failed to confirm with the clients that the documents complied with their wishes.

Guided by the above cases, we find that a reprimand would be the appropriate measure of discipline for respondent's unauthorized practice of law, as well as his assisting Estep in the unauthorized practice of law, prior to October 30, 2006. In so finding, we give great weight to the Delaware Board's

determination that, during this time, respondent's violations were negligent, not intentional.

There remains, however, respondent's continued participation in the arrangement that he had forged with Estep for the preparation of estate planning documents, after the entry of the October 30, 2006 cease and desist order, of which respondent was well aware. After entry of the order, Estep met with at least four clients. Respondent prepared documents for these clients and met with them to discuss their estate plans. At this juncture, his conduct was nothing but knowing. This circumstance warrants an increase in the discipline that would otherwise be appropriate.

Although respondent also failed to report to the OAE the disciplinary action taken against him in Delaware and then in Pennsylvania, we find that the mitigating factors, that is, respondent's inexperience and the lack of venality on his part, are such that further enhancement of the discipline is not warranted.

Based on the totality of the circumstances and guided by the above case law, we find that a censure is the appropriate measure of discipline for respondent's misconduct.

Member Wissinger 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
Louis Pashman, Chair

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

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Leonard W. Kingsley
Docket No. DRB 10-056

Argued: April 15, 2010

Decided: July 7, 2010

Disposition: Censure

Members	Disbar	Suspension	Censure	Dismiss	Disqualified	Did not participate
Pashman			X			
Frost			X			
Baugh			X			
Clark			X			
Doremus			X			
Stanton			X			
Wissinger						X
Yamner			X			
Zmirich			X			
Total:			8			1

Julianne K. DeCore
Julianne K. DeCore
Chief Counsel