Disciplinary Review Board
Docket No. DRB 12-302
District Docket No. XIV-2012-0496E

IN THE MATTER OF	
MIGUEL A. TORRELLAS	
AN ATTORNEY AT LAW	

Decision

Argued: March 21, 2013

Decided: March 28, 2013

Christina B. Kennedy 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 case of first impression was before us on a disciplinary stipulation between respondent and the Office of Attorney Ethics (OAE). It stemmed from respondent's practicing law in New Jersey after his New Jersey license was administratively revoked, pursuant to R. 1:28-2(c), for his failure to pay the annual assessment to the New Jersey Lawyers' Fund for Client Protection (CPF) for a period of seven consecutive years. Respondent stipulated that his conduct violated RPC 5.5(a) (a lawyer shall

not practice law in a jurisdiction where doing so violates the regulation of the legal profession in that jurisdiction).

The OAE recommended a three-month suspension. For the reasons expressed below, we determine that the more appropriate form of discipline is a six-month suspension, to become effective if and when respondent is re-admitted to the New Jersey bar.

Respondent was admitted to the New Jersey bar in 1990. He has no disciplinary record in New Jersey. At the time of the stipulation, he maintained an office for the practice of law at Polizzotto & Polizzotto, LLC, in Brooklyn, New York.

According to the stipulation, respondent was an associate at the law firm of James Berenthal, in New York, from 1993 to 2000. From 1992 through 2000, that firm consistently paid his CPF fees. In 2001, respondent worked as an associate at another law firm in New York.

In January 2002, respondent joined the Polizzotto law firm. While at Polizzotto, he mistakenly assumed that his CPF fees were being paid by that firm, but took no action to confirm his assumption. As it turned out, for a period of ten years, from 2001 to 2011, his CPF fees were not paid. As a result, on September 24, 2007, his license was administratively revoked, pursuant to R. 1:28-2(c).[1]

[1] That rule provides that an attorney who, at the time of the publication of the 2005 CPF list of ineligible attorneys and thereafter, has been declared ineligible for seven or more

(footnote cont'd on next page)

Although respondent's practice was primarily in New York, he made two or three New Jersey appearances on New Jersey cases, after his license was revoked. According to the stipulation, in 2010, respondent "filed pleadings, appeared at oral argument, and at a trial call, in Ocean County Superior Court, in the matter of Pfiefer, et al vs. Joan and John Langone, et al OCN-L-1995-10." When the judge advised respondent of his license revocation, respondent had the case transferred to another attorney in the Polizzotto firm, who was licensed in New Jersey.

Respondent stipulated that he "failed to keep track of notices from New Jersey regarding the status of his license, since his practice was almost exclusively in New York." Although he maintained that he did not recall receiving notice of his revocation, he "[did] not deny receiving notice of his revocation."

As indicated previously, the OAE recommended a three-month suspension, relying on disciplinary cases involving attorneys who

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(footnote cont'd)
consecutive years shall have his or her license to practice in New Jersey revoked by order of the Supreme Court. The rule also provides that, on the entry of a license revocation order, the attorney's membership in the New Jersey bar shall cease and, if the attorney wishes to be re-admitted to the practice of law in New Jersey, the attorney will have to re-take the bar examination. The rule further provides that an order of revocation "shall not preclude the exercise of jurisdiction by the disciplinary system in respect of any misconduct that occurred prior to the Order's effective date."

represented clients at a time when they were either ineligible to practice law for failure to pay the CPF fee or suspended for disciplinary infractions. The OAE cited In re Sharma, 193 N.J. 599 (2008) (ineligible), In re Bowman, 187 N.J. 84 (2006) (suspended), In re Marra, 170 N.J. 411 (2002) (suspended), and In re Schwartz, 163 N.J. 501 (2000) (ineligible).[2]

In Bowman, the attorney received a one-year suspension for practicing law (three matters) during a period of suspension and for failing to file the required R. 1:20-20 affidavit, following a three-month suspension. Compelling circumstances were considered, in mitigation.

In Marra, the attorney was suspended for one year for his representation in two client matters and for failure to comply with the recordkeeping rules. Marra had previously received a private reprimand, a reprimand, and a three-month suspension.

In Sharma, the Court suspended the attorney for three months for practicing law in one matter, while on the CPF's list of ineligible attorneys, lacking diligence in the client's representation, failing to adequately communicate with the client, and failing to maintain a bona fide office. There was no evidence that Sharma knew of his ineligibility. Sharma had received a censure and a reprimand, both on a default basis.

[2] As seen below, practicing law while suspended is a much more serious offense than practicing law while ineligible.

In Schwartz, the attorney was suspended for three months for practicing law in ten cases, during a seven-year period of ineligibility, and for failing to maintain a bona fide office. The attorney knew that she was ineligible.

In support of the OAE's recommendation for a three-month suspension, the stipulation cited the following mitigating circumstances:

> In the case at bar, respondent only appeared in New Jersey courts sporadically while ineligible and represented one client after his license had been administratively revoked pursuant to R.1:28-2(c) for failure to pay his [CPF] fee for seven consecutive years.
>
> Since respondent's license revocation was administrative, rather than for disciplinary purposes, and because respondent has no prior disciplinary history, the OAE submits that the appropriate level of discipline is a three month suspension.
>
> [SC.][3]

Following a de novo review of the record, the Board was satisfied that the stipulation clearly and convincingly establishes that respondent's conduct was unethical.

Prior to analyzing the extent of respondent's conduct and the appropriate level of discipline, we must consider whether the disciplinary system has jurisdiction over an attorney whose

[3] "SC" denotes Section C of the disciplinary stipulation.

unethical conduct occurred after the attorney was no longer a member of the bar.

We know that attorneys who have resigned from the bar and who have committed unethical acts before the resignation are subject to the disciplinary jurisdiction of the Supreme Court. R. 1:20-1(a) and R. 1:20-22(c) allow for discipline to be imposed after the individual is no longer a lawyer, but for conduct that took place when the individual was a lawyer. Recall also that paragraph (c) of the revocation rule, R. 1:28-2, states that an order of revocation does not preclude the exercise of jurisdiction by the disciplinary system for any conduct that occurred prior to the order.

Although it is clear that discipline may be imposed on individuals who have resigned from the bar or whose license has been revoked (so long as the conduct pre-dated the resignation or revocation), the present situation is very different. Respondent was not an attorney in New Jersey when his conduct occurred in New Jersey. By the time that he filed pleadings, appeared at oral argument, and attended a trial call in the Ocean County matter (2010), his New Jersey license had already been revoked (2007). This is not a case of an individual who no longer had a license to practice law and who ran afoul of the ethics rules when he still held that license (in which case, according to the rules, discipline could still be imposed). This is a case of an individual who no longer had a New Jersey attorney license when

the infractions were committed. Thus, there would appear to be a jurisdiction problem.

That said, we are convinced that jurisdiction may be exercised in this case, based on Supreme Court precedent. In two cases, the New Jersey Supreme Court imposed discipline on out-of-state attorneys who engaged in the unauthorized practice of law in this state. In re Haberman, 170 N.J. 197 (2001), and In re Boyajian, 202 N.J. 332 (2010).

Haberman, a New York, but not a New Jersey attorney, maintained a New Jersey law office with a member of the New Jersey bar. In two instances, Haberman represented New Jersey clients in New Jersey. The Court found him guilty of having violated RPC 5.5(a) (unauthorized practice of law), as well as RPC 3.3(a)(5) and RPC 8.4(c) (failure to disclose to the court that he was not admitted to the New Jersey bar).

Haberman stipulated the facts that gave rise to the disciplinary proceedings against him. Noting that by entering into a stipulation of facts Haberman had submitted himself to its jurisdiction (the Court order specifically mentions this circumstance), the Court reprimanded him and, in addition, suspended his right to apply for pro hac vice admission in New Jersey for one year.

In Boyajian, the attorney, who was admitted in California, but not in New Jersey, also stipulated the conduct that led to his

disciplinary matter.[4] Specifically, from 2002 through 2004, Boyajian was a principal and the non-attorney administrator of the firm Boyajian and Brandon, formerly JBC & Associates, P.C., (JBC), which was engaged in the business of collecting debts owed to its clients. JBC employed attorneys who filed suits in New Jersey courts, as well as non-attorney debt collectors and supervisors. Boyajian failed to properly supervise JBC's attorneys and employees by not discovering their unethical and unlawful actions. He received a reprimand.

In light of the Court's exercise of jurisdiction and imposition of discipline in both Haberman and Boyajian, in which both attorneys submitted themselves to the jurisdiction of the Court by way of stipulation, nothing seems to prevent us from taking similar action in this case. Like Haberman and Boyajian, respondent submitted himself to the jurisdiction of the disciplinary system, through his stipulation.

We now turn to the details of this respondent's unethical conduct, the suitable discipline to be meted out, and any aggravating or mitigating factors affecting the measure of discipline.

Respondent stipulated that he violated RPC 5.5(a), which

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[4] Although the Court order does not specifically mention that Boyajian submitted himself to the jurisdiction of the Court, it may be implied that, as in Haberman, jurisdiction was exercised over him because he submitted himself to the Court's authority, through the stipulation of his misconduct.

provides as follows:

> (a) A lawyer shall not:
> (1) practice law in a jurisdiction where doing so violates the regulation of the legal profession in that jurisdiction; or
> (2) assist a person who is not a member of the bar in the performance of activity that constitutes the unauthorized practice of law.

Paragraph (b) of the rule allows for exceptions:

> (b) A lawyer not admitted to the Bar of this State who is admitted to practice law before the highest court of any other state, territory of the United States, Puerto Rico, or the District of Columbia (hereinafter a United States jurisdiction) may engage in the lawful practice of law in New Jersey only if:
> (1) the lawyer is admitted to practice pro hac vice pursuant to R.1:21-2 or is preparing for a proceeding in which the lawyer reasonably expects to be so admitted and is associated in that preparation with a lawyer admitted to practice in this jurisdiction; or
> (2) the lawyer is an in-house counsel and complies with R.1:27-2; or
> (3) under any of the following circumstances:
> (i) the lawyer engages in the negotiation of the terms of a transaction in furtherance of the lawyer's representation on behalf of an existing client in a jurisdiction in which the lawyer is admitted to practice and the transaction originates in or is otherwise related to a jurisdiction in which the lawyer is admitted to practice;
> (ii) the lawyer engages in the representation of a party to a dispute by participating in arbitration, mediation or other alternate or complementary dispute resolution program, the representation is on behalf of an existing client in a jurisdiction in which the lawyer is admitted to practice, and the dispute originates in or is otherwise related to a jurisdiction in which the lawyer

> is admitted to practice;
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> (iii) the lawyer investigates, engages in discovery, interviews witnesses or deposes witnesses in this jurisdiction for a proceeding pending or anticipated to be instituted in a jurisdiction in which the lawyer is admitted to practice;
>
> (iv) the lawyer practices under circumstances other than (i) through (iii) above, with respect to a matter where the practice activity arises directly out of the lawyer's representation on behalf of an existing client in a jurisdiction in which the lawyer is admitted to practice, provided that such practice in this jurisdiction is occasional and is undertaken only when the lawyer's disengagement would result in substantial inefficiency, impracticality or detriment to the client.

Obviously, if respondent stipulated to having violated this RPC, he conceded that his representation of clients did not fall within any of the exceptions of paragraph (b). He acknowledged that his representation of clients in New Jersey courts was prohibited because he was no longer a New Jersey attorney at the time. In short, he admitted that he was guilty of the unauthorized practice of law in New Jersey.

That leaves only the question of the measure of discipline for this case of first impression.

Attorneys who practice while ineligible for failure to pay the annual assessment to the CPF typically receive an admonition or a reprimand. Attorneys who practice while suspended are more severely disciplined (suspension and even disbarment) and

deservedly so. They have been suspended in the first place because they committed serious unethical acts. Enter those who practice with a revoked license.

The OAE's position is that a three-month suspension is the threshold form of discipline for attorneys who practice after the revocation of their licenses. According to the OAE, the suspension should take effect if and when the attorney applies for re-admission to the New Jersey bar.

That recommended degree of discipline appears proper for attorneys who practice law following revocation, a transgression more serious than practicing law during a period of ineligibility for failure to pay the CPF assessment and less serious than practicing during a period of suspension. In the first instance, the failure to pay the CPF is often the product of inadvertence or insolvency; in the second, almost invariably a serious offense has been committed, warranting a severe sanction -- a suspension from the practice of law or even disbarment.[5]

As a general rule, practicing with a revoked license may fall in between those two violations. Obviously, more serious circumstances -- the attorney's conscious, wilfull disregard of

[5] See, e.g., In re Bowman, supra, 187 N.J. 84 (one-year suspension); In re Marra, supra, 170 N.J. 411 (one-year suspension); In re Wheeler, 140 N.J. 321 (1995) (two-year suspension); In re Kasdan, 132 N.J. 99 (1993) (three-year suspension); In re Walsh, Jr., 202 N.J. 134 (2010) (disbarment); and In re Olitsky, 174 N.J. 352 (2002) (disbarment).

his CPF obligations; the attorney's awareness of the license revocation; the attorney's defiance of the Court's order of revocation; the attorney's deceitful conduct toward clients, courts, and adversaries about the status of his or her license to practice law in a particular jurisdiction -- all play a significant role in assessing the adequate degree of discipline in each case.

In this instance, the stipulation cited, in mitigation, the administrative, rather than disciplinary, nature of the license revocation and respondent's clean ethics record. Also, paragraph B4 of the stipulation states that "respondent mistakenly assumed that his [CPF] fees were being paid by the [Polizzotto] firm." The question is whether that assumption was reasonable or whether respondent had notice that his fees were not being paid by his firm and that eventually his license was revoked.

At this juncture, it becomes important to examine the notice procedure employed by the CPF in revocation cases.

Any bills or notices generated by the CPF are forwarded to the address designated by the lawyer on the annual registration form. Lawyers whose licenses were revoked in 2007, as in this case, would have received, with the CPF's second billing (in July), a notice with the words **"PLEASE READ THIS IMPORTANT NOTICE!"** That notice contained the following warning, in part:

> If you are receiving this with your 2007 second billing form, our records indicate that you have been on the ineligible list since 2001. This will be the last billing you receive unless you rectify the situation.
>
> In accordance with Court Rule, upon publication of this year's Ineligible List, all lawyers whose names have been on the Ineligible List for seven or more consecutive years will have their licenses revoked. **Therefore, unless you *completely* fulfill your assessment obligations for 2007 and *all* prior years, you will no longer be a lawyer in New Jersey when the Ineligible List is published in September. If you wished to be licensed to practice law in New Jersey again, you would have to undergo the entire admissions process, including the Bar Exam.**

If the lawyer would not have rectified the problem, license revocation would have ensued. A notice of the revocation would have been sent to the address designated by the lawyer on the annual registration form. That notice would have read as follows:

REVOCATION NOTICE

> In accordance with Rule 1:28-2(c), your license to practice law in New Jersey has been administratively revoked. If you ever wish to regain membership in the New Jersey Bar, you will have to undergo the entire admissions process, including the taking of the Bar Examination. In that event, please contact the Board of Bar Examiners, P.O. Box 973, Trenton, NJ 08625, (609) 984-2111.
>
> The Court Order revoking your license was published on September 24, 2007 (the effective date of revocation). A copy of the Order is printed on the reverse side of this notice. The List on which your name was included was

published in the *New Jersey Law Journal* and appears on the Court's website at www.njcourtsonline.com under Notices to the Bar.

In paragraph B8 of the stipulation, respondent conceded that he "failed to keep track of notices from New Jersey regarding the status of his license, since his practice was almost exclusively in New York." In paragraph B9, he stated that he "does not recall, but does not deny receiving notice of his revocation." Under these circumstances, it cannot be found, by clear and convincing evidence, that respondent was unaware of his license revocation and that, therefore, the three-month suspension is sufficient discipline for his conduct. By analogy to the cases addressing practicing while ineligible, the suggested threshold degree of discipline should be elevated because of his knowledge of the revocation.

Lack of knowledge of an attorney's ineligibility mitigates his or her having practiced law while ineligible (an admonition is imposed, instead of a reprimand). See, e.g., In the Matter of Robert B. Blackman, DRB 10-137 (June 18, 2010) (admonition for attorney who practiced law while ineligible for failure to file the IOLTA registration statement for three years; the attorney did not know that he was ineligible); In the Matter of Matthew George Connolly, DRB 08-419 (March 31, 2009) (attorney ineligible to practice law was admonished for rendering legal services; the

attorney's conduct was unintentional); In re Jay, 210 N.J. 214 (2012) (reprimand for attorney who was aware of ineligibility and practiced law nevertheless; prior three-month suspension for possession of cocaine and marijuana); and In re (Queen) Payton, 207 N.J. 31 (2011) (reprimand imposed; attorney who practiced law while ineligible was aware of her ineligibility and had received an admonition for the same violation).

If the threshold discipline for practicing on a revoked license is to be a three-month suspension, a proposition that appears reasonable in the absence of aggravating factors, then this respondent must receive a six-month suspension because he did not deny having received notice of the revocation.

We recognize that to impose traditional attorney discipline on out-of-state attorneys seems meaningless. What impact does an admonition, a reprimand, or a censure, for example, have on a non-New Jersey attorney? More significantly, how is a non-New Jersey attorney suspended in New Jersey (or even disbarred)? One answer could be that the suspension will take effect if the attorney applies for re-admission. But what if the attorney was never a New Jersey attorney or, in the case of revocation, does not apply for re-admission? The "discipline" would be merely theoretical or potential, not actual.

It is true that, if the attorney is admitted in other jurisdiction(s), reciprocal discipline may follow. It is also true

that the attorney's conduct may be referred to the appropriate county prosecutor's office for having practiced law without a license, in violation of N.J.S.A. 2C-21 (Unauthorized Practice of Law). Moreover, there are non-disciplinary remedies, such as prohibiting the attorney from applying for pro hac vice admission either for a period of time (or forever) or assessing costs of the disciplinary proceeding against the offending attorney.[6]

With those considerations in mind, including respondent's knowledge of his revocation, we determine that a six-month suspension is appropriate in this case, to take effect if and when respondent is re-admitted to the New Jersey bar. Respondent is also barred from applying for admission pro hac vice in New Jersey for the period preceding his re-admission.

We determine also that the OAE should refer respondent's conduct to New York disciplinary authorities for whatever action they may deem appropriate.

Finally, we determine that respondent should be responsible for the payment of basic administrative costs (in this case, $2,000) and actually-incurred disciplinary expenses, as provided

[6] The Court did so in In re Kasson, 141 N.J. 83 (1995), a case dealing with an out-of-state lawyer, Spencer Wertheimer, who had a New Jersey office and employed a New Jersey lawyer, Michael Kasson, to manage the office. The Court found that Kasson had failed to comply with the requirements of the bona fide office rule then in effect. The Court reprimanded Kasson and ordered Wertheimer to pay the administrative costs incurred in connection with the prosecution of the disciplinary matter.

in R. 1:20-17 and as required by every Court order imposing discipline. Such payment is to be made following the entry of the Court's order of discipline, rather than following re-admission.

Vice-Chair Frost and member Baugh did not participate.

Disciplinary Review Board
Bruce W. Clark, Esq.

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

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Miguel A. Torrellas
Docket No. DRB 12-302

Argued: March 21, 2013

Decided: March 28, 2013

Disposition: Six-month suspension

Members	Disbar	Six-month Suspension	Reprimand	Disqualified	Did not participate
Pashman		X			
Frost					X
Baugh					X
Clark		X			
Doremus		X			
Gallipoli		X			
Wissinger		X			
Yamner		X			
Zmirich		X			
Total:		7			2

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