SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 14-022
District Docket No. XIV-2008-0477E

IN THE MATTER OF	
FRANK J. HANCOCK	
AN ATTORNEY AT LAW	

Decision

Argued: April 17, 2014

Decided: August 20, 2014

Hillary K. Horton appeared on behalf of the Office of Attorney Ethics.

Respondent did not appear for oral argument, despite proper service.

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

This matter was before us on a motion for reciprocal discipline filed by the Office of Attorney Ethics (OAE), pursuant to R. 1:20-14(a)(4), based on respondent's disbarment in New York for assisting a disbarred attorney in the unauthorized practice of law.

The OAE recommended a six-month suspension. At oral argument before us, the OAE indicated that it would not object

to a retroactive suspension. For the reasons expressed below, we agree with the OAE that a six-month suspension is appropriate and determine that it should be retroactive to September 24, 2008, the date that respondent notified the OAE of his New York disbarment.[1]

Respondent was admitted to the New Jersey bar in 1979. He was also admitted to the Massachusetts bar in 1976, the New York bar in 1978, and the District of Columbia bar in 1979. He has no prior discipline.

On July 31, 2006, the New York Grievance Committee for the Second and Eleventh Judicial Districts served a petition on respondent and his co-respondent, Sheldon H. Kronegold.[2] The record does not indicate whether respondent and Kronegold had a professional association.

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[1] Nothing in the record indicates that respondent was in any way responsible for the delay in the filing of this motion for reciprocal discipline. At oral argument, the OAE acknowledged that respondent had promptly advised that office of his New York disbarment.

[2] Kronegold, too, was disbarred in New York for his involvement in this and in another unrelated matter. He was later disciplined in New Jersey, on a 2007 motion for reciprocal discipline filed by the OAE.

The conduct that gave rise to respondent's New York disciplinary matter stemmed from his professional relationship with Burton Pugach, a disbarred New York attorney, whom he met in 1980. Over the years, the two became close personal friends. Respondent "looked up" to Pugach as a "father figure." In 1991, respondent allowed Pugach to assist him in his law office, as a paralegal. Among other things, Pugach prepared criminal motions.

In 2001, respondent received a Letter of Caution from New York authorities, warning him that, if Pugach performed any of a number of enumerated functions, respondent would be in violation of the New York equivalent of New Jersey RPC 5.5(a)(2) (assisting a nonlawyer in the unauthorized practice of law). Despite this warning, respondent allowed Pugach to perform legal work in two client matters, as follows:

I. THE HEMBURY MATTER

In October 2002, Rosemarie D'Ambrosio (a/k/a Rosemarie Hembury) "hired" Pugach to represent her in the appeal of a determination of the Family Court, Suffolk County, awarding custody of her son to her ex-husband. That same month, Pugach paid Kronegold to provide the required legal services to Hembury. Also that same month, Kronegold signed and filed a Notice of Appeal and Order to Show Cause in the Appellate

Division, Second Judicial Department, as Hembury's attorney of record, seeking a stay of the family court's determination. Kronegold did so at Pugach's request. He did not prepare a written fee agreement for the matter.

On March 27, 2003, Hembury's brief was filed in the Appellate Division, Second Judicial Department. Pugach had prepared the brief, which bore Kronegold's purported signature, as attorney for Hembury.

On April 28, 2003, Kronegold obtained a copy of Hembury's ex-husband's reply brief and, on May 16, 2003, received a reminder notice that oral argument was scheduled for June 9, 2003.

On June 9, 2003, at Pugach's request, respondent appeared for oral argument, as Hembury's counsel. Respondent, too, never prepared a written fee agreement for Hembury.

At oral argument before the appellate court, respondent misrepresented that he was appearing pro bono in the matter, when, in fact, Hembury had paid him $1,000 for the representation.

II. THE ST. STEPHEN'S CORPORATION MATTER

In December 2003, Pugach prepared several Chapter 11 bankruptcy petitions for the St. Stephen's Corporation. The

petitions were subsequently filed in the United States Bankruptcy Court for the Southern District of New York. At Pugach's request, respondent signed those petitions, as attorney for the debtor. Respondent then failed to properly supervise Pugach, who, subsequently, "unlawfully conduct[ed] the bankruptcy proceedings under respondent's name."

At a date not disclosed in the record, respondent made conflicting, false, and misleading statements to the bankruptcy court about his and Pugach's involvement in the bankruptcy matter. On August 5, 2004, the bankruptcy judge sanctioned respondent $9,869, presumably for his false statements to him.

* * *

At the conclusion of the disciplinary proceedings, the New York Court disbarred respondent, concluding that he had "afforded so little regard to his license as to allow a disbarred felon to use his name freely on court papers and to advertise as his paralegal."

In its brief to us, the OAE noted that the rules violated in New York are comparable to New Jersey R. 5:3-5(a) and the following New Jersey RPCs: RPC 1.5(b) (failure to utilize a written fee agreement), RPC 5.5(a)(2) (assisting a nonlawyer in

the unauthorized practice of law), and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation).[3]

As indicated previously, the OAE urged us to impose a six-month suspension, citing numerous cases related to the charges against respondent, among them, In re Kronegold, 197 N.J. 22 (2008) (attorney disbarred in New York for aiding a disbarred attorney in the unauthorized practice of law), In re Cermack, 174 N.J. 560 (2002) (six-month suspension for attorney who entered into an agreement allowing a suspended lawyer to continue to represent his own clients, while the attorney made court appearances in those matters), and In re Garcia, 195 N.J. 164 (2008) (in a reciprocal discipline matter, attorney received a fifteen-month suspension for assisting her husband, a suspended attorney, in the unauthorized practice of law; other serious violations also committed).

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

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[3] The New York Court also found that respondent had knowingly made a misrepresentation to it, during oral argument. The Court did not elaborate further about that misrepresentation.

Pursuant to R. 1:20-14(a)(5), another jurisdiction's finding of misconduct conclusively establishes the facts on which it rests, for purposes of a disciplinary proceeding in this state. We, therefore, adopt the findings of the New York Court.

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

> 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 upon 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;
>
> (D) the procedure followed in the foreign matter was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process; or
>
> (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), however, applies. In New Jersey, discipline for respondent's misconduct would differ substantially from disbarment, the discipline imposed in New York.[4]

In New Jersey, attorneys who have assisted suspended or disbarred attorneys in the unauthorized practice of law received sanctions ranging from a reprimand to a six-month suspension. See, e.g., In re Ezon, 172 N.J. 235 (2002) (reprimand imposed on attorney for assisting a disbarred attorney (his father) in the practice of law; by executing a stipulation, the attorney misled the court and other attorneys that he was representing the client; we considered, in mitigation, that the disbarred attorney was the attorney's father); In re Kronegold, supra, 197 N.J. 22 (motion for reciprocal discipline; six-month suspension for attorney who assisted a disbarred attorney in the unauthorized practice of law;[5] the client "hired" the disbarred attorney, who paid Kronegold for legal services; Kronegold signed a notice of appeal for the client, at the disbarred attorney's request; the disbarred attorney then prepared and filed a brief with the

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[4] Pursuant to 22 N.Y.C.R.R. §603.14, respondent may apply for reinstatement after seven years.

[5] On that same day, Kronegold received a second six-month suspension for misconduct in an unrelated matter.

appellate court, using Kronegold's name and purported signature; Kronegold also failed to set forth in writing the rate or basis of his fee; prior reprimand); and In re Cermack, supra, 174 N.J. 560 (attorney consented to a six-month suspension for entering into an agreement to allow a suspended lawyer to continue representing clients, while the attorney was named counsel of record and made court appearances; other violations included lack of diligence; failure to communicate with clients; failure to protect clients' interests on termination of the representation; and recordkeeping infractions).

Here, in addition to assisting Pugach in the unauthorized practice of law, respondent lied to the judge in the Hembury matter that he was representing her pro bono, when she had actually paid him for his appearance. He also lied to the judge in the St. Stephen's Corporation bankruptcy matter about the extent of his and Pugach's involvement, for which respondent was sanctioned in the amount of $9,869.

The sort of misrepresentation that respondent made to the courts typically results in an admonition or a reprimand. See, e.g., In the Matter of Lawrence J. McGivney, DRB 01-060 (March 18, 2002) (admonition for attorney who improperly signed the name of his superior, an Assistant Prosecutor, to an affidavit in support of an emergent wiretap application moments before its

review by the court, knowing that the court might be misled by his action; in mitigation, it was considered that the superior had authorized the application, that the attorney was motivated by the pressure of the moment, and that he brought his impropriety to the court's attention one day after it occurred); In re Lewis, 138 N.J. 33 (1994) (admonition for attorney who attempted to deceive a court by introducing into evidence a document falsely showing that a heating problem in an apartment of which the attorney was the owner/landlord had been corrected prior to the issuance of a summons; in mitigation, it was considered that the court was not actually deceived because it discovered the impropriety before rendering a decision and that no one was harmed as a result of the attorney's actions); In re Mazeau, 122 N.J. 244 (1991) (attorney reprimanded for failure to disclose to a court his representation of a client in a prior lawsuit, when that representation would have been a factor in the court's ruling on the attorney's motion to file a late notice of tort claim); In re Whitmore, 117 N.J. 472 (1990) (reprimand for municipal prosecutor who failed to disclose to the court that a police officer whose testimony was critical to the prosecution of a DWI charge had intentionally left the courtroom before the case was called, resulting in the dismissal of the charge); and In re Shafir, 92 N.J. 138 (1983) (reprimand for an assistant prosecutor

who forged his supervisor's name on internal plea disposition forms and misrepresented information to another assistant prosecutor to consummate a plea agreement).

Respondent also failed to utilize a written fee agreement in a civil family action, as required by R. 5:3-5(a) and RPC 1.5(b). Such conduct, even if accompanied by other, non-serious ethics offenses, usually leads to an admonition. See, e.g., In the Matter of Gerald M. Saluti, DRB 11-358 (January 20, 2012); In the Matter of Myron D. Milch, DRB 11-110 (July 27, 2011); and In the Matter of Eric S. Pennington, DRB 10-116 (August 3, 2010).

For respondent's most serious misconduct, assisting a disbarred attorney in the unauthorized practice of law, a reprimand, as in Ezon, is insufficient. Ezon assisted a disbarred attorney, but his conduct was mitigated by the fact that the attorney was his father.

Respondent's conduct was nearly identical to Kronegold's, his co-respondent in the New York disciplinary matter, who received a six-month suspension in New Jersey, also for assisting Pugach, a disbarred attorney, and not preparing the requisite fee agreement. It is true that, unlike Kronegold, respondent made misrepresentations to a judge in two matters. These additional infractions, however, are counterbalanced by Kronegold's prior

reprimand (respondent has no disciplinary record) and his other six-month suspension for misconduct unrelated to Hembury.

An aggravating factor here is respondent's receipt of a cautionary letter from New York authorities, in 2001, about the consequences of allowing a disbarred attorney to perform certain functions, to which respondent paid no heed.

In mitigation, respondent has no prior discipline since his 1979 admission to the New Jersey bar, thereby showing that his conduct was out of character. There is also the passage of time to take into account. Respondent's misconduct took place between 2002 and 2004, ten to twelve years ago. The passage of time constitutes a mitigating factor, so long as the attorney was not responsible for the delay. See, e.g., In re Verdiramo, 96 N.J. 183 (1984).

On balance, we find that respondent's improprieties were sufficiently similar to Kronegold's such that a six-month suspension, the same discipline that Kronegold received, should be imposed here. We determine that the suspension should be made retroactive to September 24, 2008, when respondent advised the OAE of his New York disbarment.

Member Gallipoli voted for disbarment.

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
Ellen A. Brodsky
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Frank J. Hancock
Docket No. DRB 14-022

Argued: April 17, 2014

Decided: August 20, 2014

Disposition: Six-month retroactive suspension

Members	Disbar	Six-month Retroactive Suspension	Reprimand	Dismiss	Disqualified	Did not participate
Frost		X				
Baugh		X				
Clark		X				
Gallipoli	X					
Hoberman		X				
Singer		X				
Yamner		X				
Zmirich		X				
Total:	1	7				

Ellen A. Brodsky
Chief Counsel