

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 09-104
District Docket No. XIV-08-0465E

IN THE MATTER OF
STEVEN H. GRIFFITHS
AN ATTORNEY AT LAW

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Decision

Argued: June 18, 2009

Decided: August 27, 2009

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

Respondent waived appearance for oral argument.

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

This matter came before us on a motion for reciprocal discipline filed by the Office of Attorney Ethics ("OAE"), following respondent's one-year-and-one-day suspension in Pennsylvania for violating rules that, the OAE asserts, are comparable to New Jersey's RPC 1.16(a) (declining or terminating the representation), RPC 3.3(a)(1) (knowingly making a false statement of material fact or law to a tribunal), RPC 4.1(a) (knowingly making a false statement of material fact or law to a third person), RPC 5.5(a) (practicing law while ineligible), RPC

7.1(a) (making a false or misleading communication about the lawyer or the lawyer's services), RPC 8.4(c) (conduct involving dishonesty, fraud, deceit, or misrepresentation), RPC 8.4(d) (conduct prejudicial to the administration of justice), and R. 1:20-20 (activities of suspended attorneys).

The OAE recommends either a reprimand or a censure. For the reasons expressed below, we determine that a censure more properly addresses respondent's conduct.

Respondent was admitted to the New Jersey and the Pennsylvania bars in 1996. He has no history of discipline in New Jersey.

By order dated August 29, 2008, the Supreme Court of Pennsylvania suspended respondent for one year and one day. The facts underlying the suspension are set out in the Report and Recommendation of the Disciplinary Board of the Supreme Court of Pennsylvania ("the Pennsylvania Board"). Specifically, the Pennsylvania Board found that, after the Pennsylvania Supreme Court transferred respondent to inactive status for failure to fulfill his Continuing Legal Education ("CLE") credits, he continued to practice law by representing and providing legal services to no fewer than fifty clients. Despite respondent's receipt of proper notification of his transfer to inactive status and his resultant inability to practice law until he

fulfilled the appropriate CLE requirements, he misrepresented himself as an attorney eligible to practice law to his clients, opposing parties, and the courts.

According to the Pennsylvania Board's Report and Recommendation, on November 14, 2003, the Supreme Court of Pennsylvania informed respondent of his transfer to inactive status, effective December 14, 2003, for his failure to satisfy the CLE requirements for his compliance period. Between January 31 and September 23, 2003, the CLE Board made several attempts to provide respondent with notice of his CLE requirements, twice notifying him that he was non-compliant and facing "inactivation" of his law license.

By letter dated January 31, 2003, sent to respondent at the law firm of Frey Petrakis Deeb et al., the CLE Board enclosed a form listing the credits that respondent needed to take to be in compliance for the year ending April 30, 2003. The letter also informed him of his course attendance record and provided him with "ample time" to complete the requirements. Although respondent received the letter and enclosures, he failed to take the required CLE courses by April 30, 2003.

On June 20, 2003, the CLE Board notified respondent that the Pennsylvania Continuing Legal Education ("PACLE") records showed that he had not complied with the CLE requirements and

included an invoice for "Initial Late Fee For Non-Compliance." Respondent was warned that, after ninety days from the date of the notice, PACLE would assess a late fee against non-compliant attorneys and recommend to the Supreme Court that the lawyers be "involuntarily inactivated for non-compliance." Although respondent received this correspondence, he took no action to avoid his transfer to inactive status.

On September 23, 2003, the CLE Board forwarded to respondent another late fee notice for his non-compliance; noted his failure to meet his PACLE requirements; gave him additional time to comply or face the Court "inactivation" of his license; and notified him that to return to active status he would be required to complete the current year's requirement, as well as any unfulfilled requirements from the preceding two years, and to pay late fees. Respondent did not take the courses necessary to bring him into compliance.

By letter dated November 14, 2003, which respondent received, the Pennsylvania Board forwarded a copy of the order transferring him to inactive status; notified him that he was required to comply with Rule 217 of the Pennsylvania Rules of Disciplinary Enforcement, and enclosed various sections of the Pennsylvania Board Rules. The Pennsylvania Board also forwarded Form DB-23(i), Nonlitigation Notice of Transfer to Inactive

Status; Form DB 24(i), Litigation Notice of Transfer to Inactive Status; and Form DB-25(i), Statement of Compliance. The Pennsylvania Board informed respondent that he would be required to comply with the Pennsylvania Rules for Continuing Legal Education before it would consider his request for reinstatement.

Respondent failed to comply with the Pennsylvania Supreme Court's Order and Pa.R.D.E. 217 by failing to (1)"discontinue practicing law;" (2) wind down his Pennsylvania practice; (3) complete and file Form DB-25(i) with the Pennsylvania Board Secretary, within ten days after the effective date of his transfer to inactive status or at any time thereafter; (4) promptly notify his clients of his transfer to inactive status and his inability to act as an attorney; and (5) promptly notify opposing counsel of his transfer to inactive status and his inability to act as an attorney.

By letter dated January 30, 2004, which respondent received, the CLE Board "represented that 'PACLE records indicate that [his] status for the compliance years is INACTIVE.'"

In February 2004, respondent filed a reinstatement request with the CLE Board. By letter dated February 17, 2004, the CLE Board acknowledged the request and informed respondent that he

was required to complete CLE credits for the current year and that, if his license was not reinstated by April 30, 2004, he would be required to complete the current year's and past two years' requirements before the reinstatement procedure could begin. The letter enclosed a course attendance record form.

By March 30, 2004, respondent completed "9.5S CLE hours" that he was required to take for compliance with the Pennsylvania rules. On or about May 21, 2004, he filed with the Attorney Registrar's Office his 2004-2005 PA Attorney's Annual Fee Form, on which he circled "INACTIVE STATUS SINCE: 12/14/2003," made a line through the date and wrote "inaccurate: see attached." On May 21, 2004, he sent an email to the CLE Board stating, "I am in receipt of my annual Fee invoice from the Supreme Court which, [sic] incorrectly has me listed as 'inactive'. Originally, I was placed on involuntary inactive status due to my office' [sic] failure to remit last years [sic] fee invoice on time due to administrative error."

In May 2004, the CLE Board determined that, since the Court's November 14, 2003 order, respondent had complied with the CLE Board's Rules and Regulations.

While on inactive status, between December 14, 2003 and May 26, 2004, respondent engaged in the unauthorized practice of law at the law firm of Frey Petrakis Deeb et al. The Pennsylvania

Board's Report and Recommendation listed six civil cases in which respondent represented defendants and described his actions in the matters (among other things, negotiating with adversaries, engaging in discovery, filing pleadings, rendering advice, and communicating with opposing counsel and others). The report added that respondent rendered legal services in forty-five other matters. In performing those services, respondent held himself out to the courts, opposing counsel, and third parties as an attorney eligible to practice law.

In December 2005, an adverse party filed a Request to Open Judgment, asserting that respondent had been suspended from practicing law during "part of the time" that respondent had litigated the matter. In response, on December 12, 2005, respondent claimed that the Supreme Court had made "an administrative error."

At his disciplinary hearing, respondent testified that, during the relevant period, he experienced the following "stresses": (a) his separation and subsequent divorce from his first wife, who suffered from mental illness; (2) the death of his father-in-law, with whom he was very close and to whom he promised to take care of his first wife; (3) his second wife's lyme disease, mood swings, and excruciating pain; (4) his added responsibility at home, due to his second wife's illness; (5)

his having to work nights and weekends because of his firm's requirement for billable hours; and (6) his and his father's confrontation about his first wife.

Steven Samuel, Ph.D., testified on respondent's behalf. He stated that he had met with respondent twice and conducted tests to evaluate respondent's mental state. He diagnosed respondent with a general anxiety disorder - difficulty coping with stress and anxiety. According to Samuel, respondent withdrew into himself and blocked out things of importance. Samuel testified that the anxiety disorder "substantially caused the misconduct."

Additional mitigation included the testimony of eight witnesses about respondent's good reputation in the community for truthfulness, honesty and trustworthiness, and respondent's sincere remorse for his actions.

The Pennsylvania Board concluded that respondent violated Pennsylvania's RPC 1.16(a)(1) (representing a client when the representation will result in a violation of the Rules of Professional Conduct); RPC 3.3(a)(1) (knowingly making a false statement of material fact or law to a tribunal); RPC 4.1(a) (knowingly making a false statement of material fact or law to a third person); RPC 5.5(a) (practicing law while ineligible); RPC 7.1(a) (making false or misleading communications about the lawyer or the lawyer's services); RPC 8.4(c) (conduct involving

dishonesty, fraud, deceit or misrepresentation); and RPC 8.4(d) (conduct prejudicial to the administration of justice). The Pennsylvania Board also found respondent guilty of violating a number of the Rules of Disciplinary Enforcement: Pa.R.D.E. 217(a) and (b) (prompt notification of transfer to inactive status to all clients being represented in certain matters and to all attorneys representing adverse parties); Pa.R.D.E. 217(c)(2) (prompt notification of transfer to inactive status to other persons with whom the attorney may expect to have professional contacts where there is a reasonable probability that they may infer that he or she continues to be in good standing); Pa.R.D.E. 217(d) (prohibiting an attorney who has been transferred to inactive status from accepting new cases or legal matters); Pa.R.D.E. 217(e) (within ten days of the effective date of the transfer to inactive status, file with the Pennsylvania Board a verified statement showing compliance with the rules); Pa.R.D.E. 217(j)(1) (prohibiting engaging in law-related activities without the direct supervision of a member in good standing of the Bar of the Commonwealth of Pennsylvania); Pa.R.D.E. 217(j)(3) (prohibiting direct communication with a client or third party unless the communication is limited to ministerial matters); and Pa.R.D.E. 217(j)(4)(i),(ii)-(iv) and

(ix) (prohibition against certain specific law related activities).

The Pennsylvania Board found clear and convincing evidence that respondent "suffered from a mental disorder that substantially caused his misconduct." The majority of that Board was persuaded that respondent should be suspended for nine months, rather than the standard one-year-and-one-day suspension, because of respondent's unblemished ethics history, his sincere remorse, and the existence of his anxiety disorder. One Board member dissented, finding that a one-year-and-one-day suspension was consistent with precedent.

On August 29, 2008, the Pennsylvania Supreme Court suspended respondent for one year and one day. By letter dated September 18, 2008, respondent notified the OAE of his Pennsylvania suspension.

Following a full 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 establish conclusively the facts on which the Board rests for purposes of disciplinary proceedings. Therefore, we adopt the findings of the Supreme Court of Pennsylvania and deem respondent guilty of violating RPC 1.16(a) for his continuing representation of clients, after being placed on inactive status, and RPC

3.3(a)(1), RPC 4.1(a), RPC 5.5(a), RPC 8.4(c), and RPC 8.4(d) for misrepresenting his status to the court and others, for misrepresenting the reason for his transfer to inactive status, and for holding himself out to be in good standing by continuing to represent clients, after having been declared inactive. Respondent was also guilty of violating rules comparable to New Jersey R. 1:20-20, for failing to comply with Pennsylvania rules governing the activities of attorneys transferred to inactive status.

On the other hand, we find that RPC 7.1(a) (making a false or misleading communication about the lawyer or the lawyer's services) does not apply to the facts of this case. This rule is invoked when an attorney makes false claims about the services or results that he or she can achieve in a matter. Respondent's misrepresentations about his eligibility are subsumed in the other rules cited (RPC 3.3(a), RPC 4.1(a), and RPC 8.4(c)).

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

The Board shall recommend the imposition of the identical action or discipline unless the respondent demonstrates, or the Board finds on the face of the record on which the discipline in another jurisdiction was predicated that it clearly appears that:

(A) the disciplinary or disability order of the foreign jurisdiction was not entered;

(B) the disciplinary or disability order of the foreign jurisdiction does not apply to the respondent;

(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 disciplinary 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 fall within the scope of subparagraphs (A) through (D). However, subparagraph (E) applies because similar misconduct in New Jersey results in substantially different discipline.

In New Jersey, practicing law while ineligible, without more, is generally met with an admonition if the attorney is unaware of the ineligibility or advances compelling mitigating factors. See, e.g., In the Matter of Matthew George Connolly, DRB 08-419 (March 31, 2009) (attorney ineligible to practice law, rendered legal services; the attorney's conduct was unintentional); In the Matter of William C. Brummel, DRB 06-031 (March 21, 2006) (attorney practiced law during a four-month period of ineligibility; he was unaware of his ineligible status); In the Matter of Frank D. DeVito, DRB 06-116 (July 21, 2006) (attorney practiced law while ineligible, failed to cooperate with the OAE, and committed recordkeeping violations; compelling mitigating factors justified only an admonition, including the attorney's lack of knowledge of his

ineligibility); In the Matter of Richard J. Cohen, DRB 04-209 (July 16, 2004) (attorney practiced law during nineteen-month ineligibility; the attorney was unaware of his ineligibility); In the Matter of William N. Stahl, DRB 04-166 (June 22, 2004) (attorney practiced law while ineligible and failed to maintain a trust and a business account; specifically, the attorney filed a complaint on behalf of a client and made a court appearance on behalf of another client; mitigating factors were the attorney's lack of knowledge of his ineligibility, his prompt action in correcting his ineligibility status, and the absence of self-benefit; in representing the clients, the attorney was moved by humanitarian reasons); and In the Matter of Samuel Fishman, DRB 04-142 (June 22, 2004) (attorney, while ineligible to practice law, represented one client in a lawsuit and signed a retainer agreement in connection with another client matter; the attorney also failed to maintain a trust and a business account; mitigating factors were the attorney's lack of knowledge of his ineligibility, his contrition at the hearing, his quick action in remedying the recordkeeping deficiency, and the lack of disciplinary history).

A reprimand is usually imposed when the attorney has an extensive ethics history, has been disciplined for conduct of the same sort, has also committed other ethics improprieties, or

is aware of the ineligibility and practices law nevertheless. See, e.g., In re Austin, 198 N.J. 599 (2009) (during one-year period of ineligibility attorney made three court appearances on behalf an attorney-friend who was not admitted in New Jersey, receiving a \$500 fee for each of the three matters; the attorney knew that he was ineligible; also, the attorney did not keep a trust and a business account in New Jersey and misrepresented, on his annual registration form, that he did so; several mitigating factors considered, including the attorney's unblemished disciplinary record); In re Kaniper, 192 N.J. 40 (2007) (attorney practiced law during two periods of ineligibility; although the attorney's employer gave her a check for the annual attorney assessment, she negotiated the check instead of mailing it to the CPF; later, her personal check to the CPF was returned for insufficient funds; the attorney's excuses that she had not received the CPF's letters about her ineligibility were deemed improbable and viewed as an aggravating factor); In re Perrella, 179 N.J. 499 (2004) (attorney advised his client that he was on the inactive list and then practiced law; the attorney filed pleadings, engaged in discovery, appeared in court, and used letterhead indicating that he was a member in good standing of the Pennsylvania bar); In re Lucid, 174 N.J. 367 (2002) (attorney practiced law while

ineligible; the attorney had been disciplined three times before: a private reprimand in 1990, for lack of diligence and failure to communicate with a client; a private reprimand in 1993, for gross neglect, lack of diligence, conduct prejudicial to the administration of justice, and failure to cooperate with disciplinary authorities; and a reprimand in 1995, for lack of diligence, failure to communicate with a client, and failure to prepare a written fee agreement); In re Hess, 174 N.J. 346 (2002) (default matter; attorney practiced law while ineligible and failed to cooperate with disciplinary authorities; the attorney had received an admonition for practicing law while ineligible and failing to maintain a bona fide office in New Jersey); In re Ellis, 164 N.J. 493 (2000) (attorney, one month after being reinstated from an earlier period of ineligibility, was notified of his 1999 annual assessment obligation, failed to make timely payment, was again declared ineligible to practice law, and continued to perform legal work for two clients; he had received a prior reprimand for unrelated violations); and In re Namias, 157 N.J. 15 (1999) (attorney practiced law while ineligible, displayed lack of diligence, and failed to communicate with a client).

On motions for reciprocal discipline from Pennsylvania, attorneys who are suspended for the unauthorized practice of law

in that Commonwealth usually receive reprimands in New Jersey. See, e.g., In re Marzano, 195 N.J. 9 (2008) (attorney represented three clients after she was placed on inactive status in Pennsylvania; the attorney was aware of her ineligibility; she was suspended for nine months in Pennsylvania); In re Davis, 194 N.J. 555 (2007) (attorney attempted to avoid his transfer to inactive status for failure to comply with CLE requirements by fraudulently continuing his non-resident active status through false statements to the CLE Board; he represented a client in Pennsylvania while on inactive status; when confronted by opposing counsel, he denied knowledge of his inactive status despite having received numerous notices; the attorney misrepresented his status to the court, to his adversary, and to disciplinary authorities; he was suspended for one-year-and-one-day in Pennsylvania; extensive mitigation considered: no history of discipline; the case was the only Pennsylvania case he had handled; he had no intention to practice law in Pennsylvania again; he was remorseful; he cooperated with ethics authorities in both states; and he had not fully understood the limitations of the non-resident active status); In re Coleman, 185 N.J. 336 (2005) (attorney who was aware of his ineligibility to practice law in Pennsylvania for nine years signed hundreds of pleadings under the mistaken

belief that it was permissible as long as he did not take a more active role in the representation; he received in excess of \$7,000 for those services; he was suspended for two years in Pennsylvania); and In re Forman, 178 N.J. 5 (2003) (for a period of twelve years, the attorney practiced law in Pennsylvania while on the inactive list for failing to comply with Pennsylvania's CLE requirements; he received a one-year-and-one-day suspension in Pennsylvania; compelling mitigating factors considered, including the attorney's lack of knowledge of his ineligibility based on his belief that his firm had filed his annual registration forms and paid his annual fees, and the attorney's extremely heavy personal injury practice).

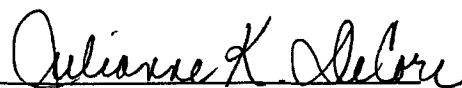
One significant element that distinguishes this case from Forman is that, unlike this respondent, Forman was unaware of his ineligibility to practice, having received no notices or orders from Pennsylvania disciplinary authorities and having relied on his employer's practice to pay for its attorneys' annual fees. Respondent, on the other hand, knew of his potential inactive status at least as early as June 2003, when the CLE Board notified him that his name would be sent to the Supreme Court with the recommendation that he be "involuntarily inactivated" for his non-compliance with the PACLE requirements.

This factor, together with the significant number of cases in which respondent represented clients while inactive (at least fifty), the misrepresentations he made about his status and reasons for his ineligibility, and his overall cavalier attitude in continuing to practice law, outweighs respondent's proffered mitigation (general anxiety disorder, witnesses' testimony about his good character, and remorse). As the Pennsylvania Board's dissenting member noted, even if respondent suffered from some form of anxiety, he was still capable of distinguishing between right and wrong.

Under the totality of these circumstances, we find that respondent deserves discipline greater than the usual reprimand imposed for similar misconduct. We, therefore, determine that a censure is warranted here.

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
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

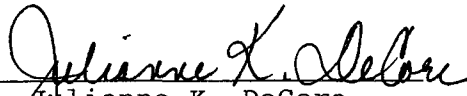
In the Matter of **STEVEN H. GRIFFITHS**
Docket No. DRB 09-104

Argued: July 16, 2009

Decided: August 27, 2009

Disposition: Censure

Members	Suspension	Censure	Reprimand	Dismiss	Disqualified	Did not participate
Pashman		X				
Frost		X				
Baugh		X				
Clark		X				
Doremus		X				
Stanton		X				
Wissinger		X				
Yamner		X				
Zmirich		X				
Total:		9				


Julianne K. DeCore
Chief Counsel