SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 14-221
District Docket No. XIV-2012-0427E

IN THE MATTER OF	:	
JOHN M. MURRAY	:	
AN ATTORNEY AT LAW	:	Decision

Argued: October 16, 2014

Decided: January 16, 2015

Hillary K. Horton 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 was before us on a motion for reciprocal discipline filed by the Office of Attorney Ethics (OAE), pursuant to R. 1:20-14(a). The OAE seeks a reprimand for respondent, as a result of his reprimand in Delaware. That reprimand was based on respondent's violation of the Delaware Lawyers' Rules of Professional Conduct, specifically, RPC 3.5(d) (engaging in conduct intended to disrupt a tribunal and engaging in

undignified and discourteous conduct that was degrading to a tribunal), RPC 6.2 (seeking to avoid appointment by the family court without good cause), and RPC 8.4(d) (engaging in conduct prejudicial to the administration of justice).[1] Respondent's misconduct originated from the Sussex County, Delaware, Family Court's appointing him, on three occasions, to represent clients in family court matters. We determine to reprimand respondent.

Respondent was admitted to the New Jersey bar in 1994 and the Delaware bar in 1995. He has no history of discipline.

On November 24, 2009, the Honorable John E. Henriksen appointed respondent to represent an adult in an April 7, 2010 guardianship proceeding in Sussex County Family Court. The appointment letter informed respondent that he might be able to receive attorney fees and to "designate another member of [his] firm to represent the person specified by notification to the party and to the Court." The court requested that respondent

[1] All references to the RPCs are to the Delaware rules. All Delaware rules referenced are equivalent to their New Jersey counterparts, but for the relevant part of RPC 3.5(d), which is similar to New Jersey RPC 3.2 (failure to treat with courtesy and consideration all persons involved in the legal process).

inform it of any "legally cognizable reason" why he could not represent the client.

On December 20, 2009, despite the court's explanation of proper family court appointment procedures, respondent wrote to Judge Henriksen and notified him that his legal practice focused primarily on "corporate/entity matters, business transactional matters and certain tax matters". Respondent suggested that an attorney with experience in family matters would better serve the client.

On January 4, 2010, Judge Henriksen denied respondent's request to withdraw from the appointment. The judge noted his presumption that respondent had been admitted to the Delaware bar and that several Delaware attorneys who do not practice family law have diligently, appropriately, and graciously accepted their appointment, as part of the long tradition of the Delaware bar. The judge suggested that respondent contact attorneys who regularly practice in the relevant area and who might be willing to substitute themselves as counsel, for a fee.

On March 4, 2010, respondent sent a letter to Judge Henriksen, stating that he had "mistakenly thought" that the judge would grant his request, in order to protect the client's best interests. Respondent wrote, "I respect Your Honor's

opinion, but a substantial portion of Your Honor's letter is not relevant to protecting [the client] in Family Court . . . ." He reminded the judge that he had "disclosed to Your Honor that [his] primary practice does not include any family law, and that [the judge was] assigning a matter to counsel inexperienced with Family Court matters who does not have the time nor the resources (a solo-practitioner) to properly represent" the client. Respondent continued:

> It appears that Your Honor does not know whether I am admitted to practice in Delaware- "With the presumption that you have been admitted to practice before the Delaware Bar" - - I am. [P]erhaps in your reference to tradition, Your Honor has oversimplified [the client]'s Family Court interests. In sum, it is not fair to [the client] to point to (a) the grace of other attorneys, (b) feelings of gratitude . . . and/or (c) tradition to support or justify Your Honor's appointment of inexperienced counsel.
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> [OAEB at 3-4;Ex.E.][2]

Respondent's March 4, 2010 letter also included footnotes that, according to the Board on Professional Responsibility of

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[2] "OAEB" refers to the OAE's brief in support of its motion for reciprocal discipline.

the Supreme Court of Delaware (Delaware Board), could be interpreted as hostile towards Judge Henriksen:

> Although I have very limited experience with Your Honor . . . Your Honor may recall a case where I became involved after your initial judgment, where Your Honor convicted an unrepresented 13 year old of a felony (in violation of her constitutional right to counsel) stating on the record, incorrectly, that the 13 year old was represented by counsel. I submitted a post-conviction letter to Your Honor identifying these and other facts. Your Honor subsequently recognized his mistake and vacated/reversed the judgment. Even though a foot surgeon and brain surgeon are both doctors, you would not want a foot surgeon to perform your brain surgery. The elementary principal [sic] - if you don't know it, don't do it - should apply. For [the client]'s protection, a business lawyer who does not practice family law should not be representing [the client] in Family Court.
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> [OAEB at 4;Ex.E.]

Despite respondent's clear objections to his appointment, he reluctantly represented the client until the matter concluded, in 2010. On June 11, 2010, Sussex County Family Court Judge Jones sent a letter to respondent, congratulating him on his satisfactory work as a family court guardian ad litem.

On January 3, 2011, Family Court Commissioner Sonja T. Wilson appointed respondent to act as legal counsel to a juvenile charged with third-degree unlawful sexual contact.

Respondent was again reminded that he could apply to receive attorney fees and "could designate another member of [his] firm to represent the client."

On January 10, 2011, again, despite the family court's explanation of proper family court appointment procedures, respondent sent a fax to Commissioner Wilson, requesting his removal as counsel. The letter was similar to the December 20, 2009 letter sent to Judge Henriksen.

On January 12, 2011, via fax, the family court denied respondent's request to withdraw. A different Commissioner handwrote the following: "Motion denied-[respondent] may find someone to substitute for him - - Commissioner Holloway. If more time is needed, may request continuance."[3]

On January 13, 2011, respondent sent a fax to Commissioner Holloway, representing that he had informed the defendant's mother that his practice was devoted to business cases and that he was not experienced in criminal law or family court matters that involved criminal charges, especially third-degree unlawful

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[3] The record does not explain why the request was sent to Commissioner Wilson, but denied by Commissioner Holloway.

sexual contact. He also informed the defendant's mother that his motion to withdraw as counsel had been denied.

In addition, respondent requested that the court provide specific factual reasoning as to why it had appointed an "inexperienced" attorney for the representation of a defendant in a matter involving a third-degree unlawful sexual contact charge. He also requested a thirty-day continuance and again referred to the difference between a foot surgeon and a brain surgeon.

On January 21, 2011, Commissioner Holloway forwarded respondent's letters to the Delaware Office of Disciplinary Counsel (DODC). The Commissioner informed the DODC that respondent had been permitted to withdraw from the January 2011 family court appointment, as the "well had been poisoned." She noted that respondent had interacted with the court in a similar manner, on more than one occasion. She expressed concern that respondent would try the same tactic, when he was appointed the next time, and she hoped that the DODC could better educate him about his responsibilities to the court, the bar, and the public. On February 11, 2011, the DODC notified respondent of the family court's referral.

On March 11, 2011, Chief Judge Chandlee Johnson Kuhn appointed respondent to serve as counsel in a criminal matter (arraignment for gun court -- prohibited possession of firearms by a person, theft of firearms, and second-degree conspiracy). The appointment letter informed respondent that he was permitted to designate another member of his firm to represent the client.

On March 16, 2011, respondent faxed a note to Judge Henriksen, again attempting to withdraw from the assignment, citing his belief that he did not have sufficient time to prepare for the arraignment.[4] Respondent informed Judge Henriksen of the DODC matter pending against him, stating that Commissioner Holloway had filed a complaint and sent letters from Judge Henriksen to the DODC. Respondent insinuated that Judge Henriksen was potentially biased, as a result of the family court's referral to the DODC. Respondent suggested that, due to this alleged bias, it was best for his client if he withdrew from the representation. He requested a thirty-five day continuance, if his request to withdraw was denied.

[4] The record is silent as to why respondent wrote to Judge Henriksen and not Chief Judge Kuhn, who had made the initial assignment.

Respondent expressed his "hope" that the court would appoint him in matters that were within his expertise and requested that the family court send all correspondence to his attorney, until the DODC investigation was concluded.

On March 23, 2011, respondent wrote to the client's mother to memorialize a March 17, 2011 meeting among them and the client. He repeated the statements that he had made to the mother, at their meeting, that is, his legal expertise is business transactional law and his practice focuses on corporate matters. He also informed her that he had no experience in handling family court matters and that, despite having notified the judge about his inexperience, the judge had denied his request to withdraw.

In the March 23, 2011 letter, respondent also referred to a March 22, 2011 phone call, in which the client's mother had told him that she had discussed having another lawyer appointed and was going to write to the court to express her concerns about respondent's representing her son. Respondent notified the client's mother that he had received a phone call from Chief Judge Kuhn's secretary, informing him that Bruce Rodgers, Esq., would serve as respondent's mentor for her son's case. In the

letter, respondent requested further documentation from the client's mother.

On March 30, 2011, respondent wrote to Chief Judge Kuhn to inform him about his March 17, 2011 meeting with the client and his mother. Respondent also told the judge that, in a call with the defendant's mother, on March 28, 2011, she had informed him that she had retained private counsel to represent her son. Respondent requested that his letter serve as a notice of substitution of counsel and termination of the attorney-client relationship with this particular client.

On November 2, 2011, the DODC filed a four-count petition for discipline against respondent. The DODC charged him with refusing to accept an obligation under the family court rules, in violation of RPC 3.4(c) and RPC 6.2 (counts one and two); undignified and discourteous conduct that was degrading to a tribunal, in violation of RPC 3.5(d) (count three); and conduct prejudicial to the administration of justice, in violation of RPC 8.4(d). On November 21, 2011, respondent filed an answer to the DODC's petition for discipline, denying that he had violated any of the RPCs and requesting a dismissal of the petition.

On January 23, 2012, a panel of the Delaware Board held a hearing, at which respondent argued that, by attempting to

withdraw from the appointments, he was protecting the clients' best interests because he was not able to competently, diligently, and zealously advocate for the clients. He further argued that the clients had a right to effective assistance of counsel, which he could not provide, and that he could not accept cases outside his area of expertise. He denied that his letters to the family court, in which he had raised these points, were intended to be disrespectful. He admitted, however, that they could be read that way. He testified that the family court had appointed him approximately seven times, including in the three instant matters. He acknowledged that, in each of those prior matters, he had written to the court, requesting to be relieved of the appointment.

On March 8, 2012, the Delaware Board conducted a sanctions hearing. It found, by clear and convincing evidence, that respondent had violated RPC 3.5(d), RPC 6.2, and RPC 8.4(d). The Delaware Board did not find clear and convincing evidence to support a violation of RPC 3.4(c).

In aggravation, the Delaware Board noted that respondent had engaged in a pattern of misconduct in the three court appointments at issue. It also found that there had been multiple offenses, as demonstrated by the multiple letters that

respondent had sent in each of the three appointments; that respondent had failed to acknowledge that his actions were wrong, failed to understand why his conduct was found to be in violation of the rules, and failed to recognize the discourtesy of his letter to the court; and that the Delaware Board was left with the sense that, if appointed again, respondent would not alter his behavior, not seek substitute counsel, not seek the assistance of others to help him represent an indigent client in need of service, and continue to communicate with the court in the same manner.

In addition, the Delaware Board noted the vulnerability of the indigent clients whom respondent was appointed to represent, highlighting that the March 11, 2011 appointment had caused the mother of an indigent client, for whom the court had appointed counsel, to believe that she had no recourse but to pay for a private attorney for her son.

Finally, the Delaware Board looked at respondent's experience, noting that he had practiced law since 1995 and that, while his primary practice was not in the area of family law, by his admission to the bar he had demonstrated a basic general level of competency to practice law. In addition, before the three appointments at issue, respondent had already

served as a family court-appointed counsel in other cases, including serving in one matter for over four years.

In mitigation, the Delaware Board noted respondent's lack of disciplinary history, the absence of a dishonest or selfish motive, and his cooperation with the disciplinary process.

On June 18, 2012, the Delaware Supreme Court accepted the Delaware Board's report and recommendation and ordered that respondent be publicly reprimanded.

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 establish conclusively the facts on which it rests for purposes of disciplinary proceedings. Therefore, we adopt the Delaware findings that respondent violated the equivalent of New Jersey RPC 3.2, RPC 6.2, and RPC 8.4(d).

Reciprocal discipline 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;
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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;
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> (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 (E).

Discourteous behavior towards courts has led to discipline ranging from an admonition to a term of suspension. See, e.g., In the Matter of Alfred Sanderson, DRB 01-412 (2002) (admonition for attorney who, in the course of representing a client charged with DWI, made discourteous and disrespectful communications to the municipal court judge and to the municipal court administrator; in a letter to the judge, the attorney wrote: "How fortunate I am to deal with you. I lose a motion I haven't had [sic] made. Frankly, I am sick and tired of your pro-prosecution cant;" the letter went on to say, "It is not lost on me that in 1996 your little court convicted 41 percent of the

persons accused of DWI in Salem County. The explanation for this abnormality should even occur to you."); In re Swarbrick, 178 N.J. 20 (2003) (reprimand; in three matters, the attorney engaged in conduct intended to disrupt a tribunal; violations included numerous statements in front of a jury that the judge was unfair and prejudiced and announcing the time more than 130 times during a jury trial, which conduct was disruptive; the attorney also failed to expedite the litigation; prior private reprimand for similar conduct); In re Geller, 177 N.J. 505 (2003) (attorney reprimanded after he filed baseless motions accusing two judges of bias against him; failed to treat judges with courtesy (characterizing one judge's orders as "horseshit," and, in a deposition, referring to two judges as "corrupt" and labeling one of them "short, ugly and insecure"), was discourteous towards his adversary ("a thief"), the opposing party ("a moron," who "lies like a rug"), and an unrelated litigant (the attorney asked the judge if he had ordered "that character who was in the courtroom this morning to see a psychologist"); failed to comply with court orders (at times defiantly) and with the disciplinary special master's direction not to contact a judge; used means intended to delay, embarrass or burden third parties; made serious charges against two judges

without any reasonable basis; made a discriminatory remark about a judge; and titled a certification filed with the court "Fraud in Freehold"; in mitigation, the attorney's conduct occurred in the course of his own child-custody case, the attorney had an unblemished twenty-two-year career, was held in high regard personally and professionally, was involved in legal and community activities, and taught business law); In re Solow, 167 N.J. 55 (2001) (reprimand for attorney who engaged in intimidating and contemptuous conduct towards two administrative law judges; in particular, the attorney filed approximately one hundred motions seeking one of the judge's disqualification on the basis that he was blind and, therefore, unable to observe the claimant or review the documentary evidence; the motion papers repeatedly referred to the judge as "the blind judge"; prior admonition); In re Hartmann, 142 N.J. 587 (1995) (reprimand for attorney who engaged in discourteous and abusive conduct towards a judge in an attempt to intimidate the judge into hearing his client's matter that day; the attorney also intentionally and repeatedly ignored court orders to pay opposing counsel a fee); In re Lekas, 136 N.J. 515 (1994) (reprimand; while the judge was conducting a trial unrelated to her client's matter, the attorney sought to withdraw from the

client's representation; when the judge informed her of the correct procedure to follow and asked her to leave the courtroom because he was conducting a trial, the attorney refused; the judge repeatedly asked the attorney to leave because she was interrupting the trial by pacing in front of the bench during the trial; ultimately, the attorney had to be escorted out of the courtroom by a police officer; the attorney struggled against the officer, grabbing onto the seats as she was being led from the room); In re Hall, 169 N.J. 347 (2001) (attorney suspended for three months after she was found in contempt by a Superior Court judge for accusing her adversaries of lying, maligning the court, refusing to abide by the court's instructions, suggesting the existence of a conspiracy between the court and her adversaries, and making baseless charges of racism against the court; the attorney also failed to reply to the ethics grievances and, after her temporary suspension, she failed to file a R. 1:20-20 affidavit and maintained a law office); In re Yacavino, 184 N.J. 389 (2005) (six-month suspension for an attorney who, in connection with his own personal divorce matter, engaged in a pattern of filing pleadings after the identical claims had been dismissed, threatened to file criminal charges and ethics grievances in an

effort to remove a judge and defense counsel from the litigation, and engaged in a pattern of conduct showing disrespect, abuse and contempt towards judges and adversaries); In re Van Syoc, 216 N.J. 427 (2014) (six-month suspension imposed on attorney who, during a deposition, called opposing counsel "stupid" and a "bush league lawyer;" the attorney also impugned the integrity of the trial judge, by stating that he was in the defense's pocket; aggravating factors were the attorney's disciplinary history (an admonition and a reprimand), the absence of remorse, and the fact that his misconduct occurred in front of his two clients, who, as plaintiffs in the very matter in which their lawyer had accused the judge of being in the pocket of the defense, were at risk of losing confidence in the legal system); In re Shearin, 166 N.J. 558 (2001) (one-year suspension imposed on attorney by way of reciprocal discipline where, in a property dispute between rival churches, a court had ruled in favor of one of them and enjoined the other church (the attorney's client) from interfering with the owner's use and enjoyment of the property; the attorney then violated the injunction by filing two lawsuits, which were found to be frivolous, seeking rulings on matters that had already been adjudicated; the attorney also misrepresented the identity of

her client to the court, made inappropriate and offensive statements about the trial judge, failed to expedite litigation, submitted false evidence, and counseled or assisted her client in conduct that she knew was illegal, criminal, or fraudulent); In re Vincenti, 92 N.J. 591 (1983) (one-year suspension for attorney who displayed a pattern of abuse, intimidation, and contempt towards judges, witnesses, opposing counsel, and other attorneys; the attorney engaged in intentional behavior that included insults, vulgar profanities, and physical intimidation consisting of, among other things, poking his finger in another attorney's chest and bumping the attorney with his stomach and then his shoulder); In re Shearin, 172 N.J. 560 (2002) (motion for reciprocal discipline; retroactive three-year suspension for attorney who sought the same relief she had previously sought without success in prior lawsuits against a rival church in a property dispute, knowingly disobeyed a court order expressly enjoining her and her client from interfering with the rival church's use of the property, demonstrated a reckless disregard for the truth when she made disparaging statements about the mental health of a judge, and taxed the resources of two federal courts, many defendants, and many other members of the legal system who were forced to deal with frivolous matters; the

attorney had received a one-year suspension for similar misconduct); and In re Hall, 170 N.J. 400 (2002) (three-year suspension imposed on attorney who made numerous misrepresentations to trial and appellate judges, made false and baseless accusations against judges and adversaries, served a fraudulent subpoena, failed to appear for court proceedings and then misrepresented that she had not received notice, and displayed egregious courtroom demeanor by repeatedly interrupting others and becoming unduly argumentative and abusive; the misconduct occurred in four cases and spanned more than one year; the attorney had received a three-month suspension for similar misconduct.

Besides having been discourteous towards Judge Henriksen, respondent repeatedly tried to avoid court appointments. In fact, he admitted that, in addition to the three matters before the Delaware Board, he had repeatedly tried to get out of appointments in the past, to no avail. His disregard for the

appointment process and failure to follow proper procedures related to that process consumed valuable court resources.[5]

We are aware that respondent has been a member of the New Jersey and Delaware bars for twenty and nineteen years, respectively, without prior discipline. Although, guided by the above precedent, we find that a suspension would be too severe for respondent's conduct, we believe that anything less than a reprimand would be insufficient discipline, particularly because, in at least one instance, respondent's conduct caused the mother of a client to feel compelled to seek out and pay for a private attorney, having lost her confidence in the program that affords free legal counsel to qualified individuals. We, therefore, determine that a reprimand is the suitable sanction for respondent's actions.

We further determine to require respondent to reimburse the Disciplinary Oversight Committee for administrative costs and

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[5] Research uncovered no cases dealing specifically with RPC 6.2 in New Jersey. However, seeking to avoid an appointment by a tribunal is akin to ignoring an order of the court or conduct that is prejudicial to the administration of justice, a violation of RPC 8.4(d).

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 John M. Murray
Docket No. DRB 14-221

Argued: October 16, 2014

Decided: January 16, 2015

Disposition: Reprimand

Members	Disbar	Suspension	Reprimand	Dismiss	Disqualified	Did not participate
Frost			X			
Baugh			X			
Clark			X			
Gallipoli			X			
Hoberman			X			
Rivera			X			
Singer			X			
Yamner			X			
Zmirich			X			
Total:			9			

Ellen A. Brodsky
Chief Counsel