

SUPREME COURT OF NEW JERSEY  
Disciplinary Review Board  
Docket No. DRB 07-026  
District Docket No. XIV-06-469E

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IN THE MATTER OF  
NATHANIEL MARTIN DAVIS  
AN ATTORNEY AT LAW

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Decision

Argued: March 15, 2007

Decided: April 26, 2007

Richard J. Engelhardt appeared on behalf of the Office of Attorney Ethics.

Robyn M. Hill appeared on behalf of respondent.

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) pursuant to R. 1:20-14(a), following respondent's Pennsylvania suspension

for one year and one day.<sup>1</sup> Respondent practiced law in Pennsylvania while ineligible to do so, and made misrepresentations to the trial court, his adversary, and Pennsylvania licensing authorities.

The OAE recommends the imposition of a reprimand. For the reasons set forth below, we agree that a reprimand is the appropriate discipline for the totality of respondent's violations.

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

On May 11, 2006, the Disciplinary Board of the Supreme Court of Pennsylvania (the Pennsylvania Board) issued a report finding respondent guilty of violations of numerous Pennsylvania Rules of Professional Conduct and Rules of Disciplinary Enforcement (Pa.R.D.E.): RPC 1.16(a)(1) (failing to withdraw from representation of client where the representation will result in a violation of the RPCs); RPC 3.3(a)(1) (making a false statement of material fact or law to a tribunal); RPC 4.1(a) (knowingly making a false statement of material fact to a

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<sup>1</sup> Rule 218 of the Pennsylvania Rules of Disciplinary Enforcement provides that attorneys suspended for more than one year must petition the Supreme Court of Pennsylvania for reinstatement.

third person); RPC 5.5(a) and (b) (engaging in the unauthorized practice of law); RPC 7.1(a) (making a false or misleading communication about the lawyer or the lawyer's services); RPC 7.5 (using improper letterhead or professional designation); RPC 8.4(b) (committing a criminal act that reflects adversely on the attorney's honesty, trustworthiness, or fitness to practice law); RPC 8.4(c) (engaging in conduct involving dishonesty, fraud, deceit or misrepresentation); RPC 8.4(d) (engaging in conduct prejudicial to the administration of justice); Pa.R.D.E. 217(b) and (c) (failing to notify the court, client, and adversary of transfer to inactive status and consequent inability to act as an attorney); Pa.R.D.E. 217(d) (failing to properly conclude Pennsylvania law practice); Pa.R.D.E. 217(e) (failing to complete and file verified statement of compliance with the Pennsylvania Board within ten days of effective date of transfer to inactive status); and Pa.R.D.E. 217(j) (failing to discontinue the practice of law after transfer to inactive status).

The Pennsylvania Board recommended to the Supreme Court of Pennsylvania (the Pennsylvania Court) that respondent be suspended for one year and one day. The Pennsylvania Court

agreed with the Pennsylvania Board and, on August 22, 2006, suspended respondent for one year and one day.

Shortly thereafter, in September 2006, respondent notified the OAE of his Pennsylvania suspension, as required by R. 1:20-14(a).

Although respondent initially denied the allegations of the petition for discipline, he later entered into a joint stipulation with the Pennsylvania Office of Disciplinary Counsel, in which he admitted his misconduct. During a September 28, 2005 hearing, respondent again acknowledged his wrongdoing.

The Pennsylvania Board's report describes the conduct that gave rise to the disciplinary proceedings against respondent:

Petitioner's evidence proved that Respondent violated the rules as set forth in the Petition for Discipline. This evidence consisted of the Joint Stipulation of Fact, Law and Exhibits and Respondent's testimony. The evidence demonstrates that Respondent engaged in the unauthorized practice of law in Pennsylvania for a period of three years and in connection with, and in furtherance of, his unauthorized practice, he engaged in misrepresentations to the court, opposing counsel and CLE Board.

Respondent was admitted to practice law in Pennsylvania in 1996, but at all relevant times maintained his office for the practice of law in New Jersey, where he is also licensed. Respondent filed with the CLE Board Non-Resident Active Status forms in

which he represented that he did not practice law in Pennsylvania nor did he represent any Pennsylvania clients or residents in Pennsylvania state courts. In fact, Respondent engaged in the practice of law in Pennsylvania commencing in July 2001, when he filed a complaint in the Philadelphia Court of Common Pleas on behalf of his client, Richard Yoon.

When Respondent received notice that the Supreme Court of Pennsylvania was transferring him to inactive status, effective September 5, 2003, for failure to comply with Continuing Legal Education requirements, he attempted to avoid the transfer by fraudulently continuing his Non Resident Active status by making false statements to the CLE Board. Respondent made these statements to the CLE Board subject to the penalties of 18 PaC.S.A. §4904(b), relating to unsworn falsification to authorities.

In September 2003, after Respondent was transferred to inactive status, he continued to practice law by representing Mr. Yoon in the Court of Common Pleas and at an arbitration hearing. When opposing counsel confronted Respondent with his inactive status, Respondent denied that he was aware of it, despite the numerous notices to him regarding the inactive status. Respondent also made false statements to the trial court about his inactive status. The trial court issued a rule to show cause why respondent should not be removed from the case and ordered respondent and his client to appear before the court to determine the ultimate status of the case. Respondent failed to appear and consequently the court struck the client's appeal of an arbitration award. Respondent eventually withdrew from

the case approximately one month after being confronted by opposing counsel.

[OAEaEx.D.]<sup>2</sup>

During the Pennsylvania proceedings, and again before us, respondent advanced the following mitigating factors: he has no prior history of discipline; the Yoon case was the only Pennsylvania matter that he ever handled; he has no intention of practicing in Pennsylvania again; he was sorry for his actions; and he fully cooperated with ethics authorities in both states. In addition, respondent asserted that he had not fully understood the limitations of the non-resident active status and that he had failed to appear at the show cause hearing because the notice had been sent to the wrong address.

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

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 on which the discipline in another jurisdiction was predicated that it clearly appears that:

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<sup>2</sup> OAEa refers to the appendix to the OAE's brief.

(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 ambit of subparagraphs (A) through (D).

As to subparagraph (E), however, respondent's misconduct "warrants substantially different discipline," as the violations that he committed in Pennsylvania cannot support a one-year suspension in New Jersey.

Respondent stipulated that he violated RPC 1.16(a)(1); RPC 3.3(a)(1); RPC 4.1(a); RPC 5.5(a) and (b); RPC 7.1(a); RPC 7.5; RPC 8.4(b); RPC 8.4(c); and RPC 8.4(d); and related Rules of Disciplinary Enforcement. The record contains ample support for those violations.

Respondent's misconduct was essentially two-fold: (1) he represented Reverend Yoon in Pennsylvania between 2001 and 2004, when he was admittedly ineligible to practice law in that jurisdiction as a non-resident active attorney, and later, as an inactive attorney and (2) he misrepresented his status to the court and his adversary, as well as in filings with disciplinary authorities.

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 Richard J. Cohen, DRB 04-209 (July 16, 2004) (admonition for practicing 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) (admonition for practicing law while ineligible and failing 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); In the



Matter of Samuel Fishman, DRB 04-142 (June 22, 2004) (admonition for attorney who, 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); and In the Matter of Juan A. Lopez, Jr., DRB 03-353 (December 1, 2003) (admonition for attorney who practiced law while ineligible for nine months; the attorney was not aware that he was ineligible).

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 Coleman, 185 N.J. 336 (2005) (reprimand for attorney who signed more than 250 pleadings in Pennsylvania, although aware of his inactive status in that state, misrepresented to his adversary that he was permitted to sign pleadings, and displayed a lack of candor during the Pennsylvania disciplinary proceedings); In re Perrella, 179 N.J.

499 (2004) (attorney reprimanded for advising his client that he was on the inactive list and then practicing 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) (reprimand for practicing 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) (reprimand, in a default matter, for practicing law while ineligible and failing 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) (reprimand for attorney who, 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); In re Namias, 157 N.J. 15 (1999) (reprimand for attorney who displayed lack of diligence, failed to communicate with a client, and practiced law while ineligible); In re Alston, 154 N.J. 83 (1998) (reprimand for attorney who practiced law while ineligible, failed to maintain a bona fide office, and failed to cooperate with disciplinary authorities); In re Armorer, 153 N.J. 359 (1998) (reprimand for attorney who exhibited gross neglect, failed to communicate with a client, failed to maintain a bona fide office, and practiced law while ineligible); and In re Maiorello, 140 N.J. 320 (1995) (reprimand for attorney who practiced law while ineligible, failed to maintain proper trust and business account records in nine matters, and exhibited a pattern of neglect, lack of diligence, and failure to communicate with clients in six of the matters).

Here, respondent was aware of his inactive status and practiced law nevertheless. Of more concern, respondent sought thereafter to conceal the representation from the CLE by filing false certifications in 2002 and 2003, stating that he had not represented any Pennsylvania clients and had no cases pending in Pennsylvania and falsely indicated to his adversary that he had

been previously unaware of the change in status. In that sense, his conduct was analogous to that exhibited by the attorney in Coleman, supra, 185 N.J. 336, who received a reprimand.

We consider the following mitigating factors: respondent has no prior discipline; his only Pennsylvania client was Yoon; he was remorseful; and he cooperated fully with ethics authorities in both Pennsylvania and New Jersey.

Because respondent was aware that he was not eligible to practice law, and because he was guilty of other ethics infractions, discipline more severe than an admonition is warranted. Based on the above precedent, we unanimously determine that a reprimand is the appropriate level of discipline.

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  
William J. O'Shaughnessy, Chair

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

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**SUPREME COURT OF NEW JERSEY  
DISCIPLINARY REVIEW BOARD  
VOTING RECORD**

In the Matter of Nathaniel Martin Davis  
Docket No. DRB 07-026

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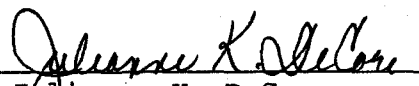
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Argued: March 15, 2007

Decided: April 26, 2007

Disposition: Reprimand

Members	Disbar	Suspension	Reprimand	Dismiss	Disqualified	Did not participate
O'Shaughnessy			X			
Pashman			X			
Baugh			X			
Boylan			X			
Frost			X			
Lolla			X			
Neuwirth			X			
Stanton			X			
Wissinger			X			
<b>Total:</b>			9			

  
Julianne K. DeCore  
Chief Counsel