SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 00-307

IN THE MATTER OF :
:
PAUL E. HABERMAN :
:
AN ATTORNEY AT LAW :

Decision

Argued: December 21, 2000

Decided: May 29, 2001

Keith E. Lynott appeared on behalf of the District VA Ethics Committee.

Respondent waived appearance.

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

This matter was before us based on a recommendation for discipline filed by the District VA Ethics Committee ("DEC"). Respondent entered into a stipulation of facts in which he admitted the underlying conduct that gave rise to the within proceedings. The complaint alleged that respondent violated RPC 5.5(a) (practicing law in violation of the rules governing the legal profession in that jurisdiction), RPC 3.3(a)(1) and (5) (knowing false statement of material fact to a tribunal and failure to disclose a material fact to a tribunal with the knowledge that the tribunal may tend to be misled by such failure), RPC

4.1(a) (false statement of material fact to a third party) and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation).

By letter dated June 16, 2000 respondent was notified that the hearing before the DEC would be held on July 19, 2000. On the morning of the hearing, respondent informed the DEC that he had a scheduling conflict and would be unable to attend the hearing. Respondent "faxed" to the DEC an executed copy of the stipulation and agreed that the hearing could proceed in his absence. Respondent waived his right to call witnesses and to submit evidence at the hearing. Respondent "faxed" a second letter to the DEC later on the hearing date stating that, in his earlier letter, he had inadvertently utilized letterhead that gave the erroneous impression that he was a practicing attorney (the letterhead said "Esq." next to his name).

Respondent was admitted to the New York bar in 1993. He is not a member of the New Jersey bar and was not admitted pro hac vice in New Jersey in connection with the two matters described in the stipulation. During the time relevant to this matter, respondent maintained an office for the practice of law with the firm of Haberman & Kranzler ("the firm"), with offices in Bergen County, New Jersey, and in New York, New York.

The hearing below and the facts set forth in the stipulation pertained to the conduct of both Jonathan H. Kranzler, respondent's law partner, and respondent.[1] Where necessary,

[1]This matter was a companion case to In the Matter of Jonathan H. Kranzler, Docket No. 00-286 (November 21, 2000). In that matter, we imposed an admonition when the attorney filed a suit while he was ineligible to practice law for failure to pay the annual assessment to the New Jersey

Kranzler's conduct is included in the within recitation of the facts, for the sake of clarity.

In 1996 respondent's firm represented Yeshiva Gedolah Congregation ("Yeshiva") in a matter in municipal court in Bayonne, Hudson County. Kranzler, who is licensed in New Jersey, filed papers in support of an application to dismiss the summons and complaint. On September 5, 1996 respondent appeared in behalf of Yeshiva in Bayonne municipal court. The ethics complaint did not allege that the firm's representation of Yeshiva was lacking in professional competence. To the contrary, the record reflects that the court was impressed with the firm's briefs, legal research and arguments. Respondent, however, did not advise the court that he was not admitted to practice in New Jersey.

In addition, in March 1997 the firm undertook the representation of Sara Wigdor, Joseph Wigdor and S&J Realty. On April 1, 1997 Kranzler filed a complaint in his clients' behalf in Superior Court in Hudson County. On July 29, 1997 respondent appeared as counsel for Joseph Wigdor at his deposition in connection with the matter. Respondent did not advise his adversary that he was not admitted to practice in New Jersey.

* * *

The complaint charged respondent with a violation of RPC 5.5(a), RPC 3.3(a)(1) and (5), RPC 4.1(a) and RPC 8.4(c).

Lawyers' Fund for Client Protection.

The DEC determined that respondent had violated RPC 5.5(a) by his appearances at the Yeshiva and Wigdor proceedings. The DEC also concluded that respondent had violated RPC 3.3(a)(5) by failing to disclose to the court a material fact (that he was not admitted to practice in New Jersey and had not been admitted pro hac vice) with the knowledge that the court might be misled by such failure. The DEC pointed out that judges

> routinely rely on counsel to properly make appearances before them. In the absence of additional information, Judges reasonably conclude that an attorney is properly before the Court. It would be burdensome and prejudicial to the administration of justice to require Judges to conduct an inquiry of each attorney who appears before him/her to determine whether that attorney is properly before the Court.

The DEC dismissed the allegations of violations of RPC 3.3(a)(1) and RPC 4.1(a). In the DEC's view, a finding of a violation of those rules would require an affirmative statement by respondent to the court and/or to a third party that he was admitted to practice in New Jersey or had been admitted pro hac vice, which was not the case here.

Finally, the DEC did not find a violation of RPC 8.4(c), citing Apple Corps. Ltd., MPL v. International Collectors Society, 15 F.Supp 2d 456 (D.N.J. 1998). As understood by the DEC, in Apple

> the court held that RPC 8.4(c) was not intended to replicate the misrepresentation provisions of the RPC or to provide a lower standard for misrepresentations that fall short of the standard to sustain a finding under such other misrepresentation provisions. The court concluded that the provision is intended to apply only to 'grave misconduct' of 'such gravity as to raise questions as to a person's fitness to be a lawyer.'

The DEC did not find evidence to sustain a finding of a violation of RPC 8.4(c).

The DEC recommended a reprimand for respondent's violation of RPC 5.5(a) and RPC 3.3(a)(5).

* * *

Upon a de novo review of the record, we are satisfied that the conclusion of the DEC that respondent's conduct was unethical is fully supported by clear and convincing evidence.

The issue of jurisdiction must be addressed first. As noted above, respondent is not a member of the New Jersey bar. Pursuant to RPC 8.5 "[a] lawyer admitted to practice in this jurisdiction is subject to the disciplinary authority of this jurisdiction although engaged in practice elsewhere." The question is whether we have jurisdiction over this respondent. By a five-to-one majority[2] we determined that we do. We reached that conclusion because respondent entered into a stipulation in this matter, thereby subjecting himself to the disciplinary system's jurisdiction. Indeed, the jurisdiction issue was not raised in this record. See In re Rovner, 164 N.J. 616 (2000) (discipline imposed on attorney who was not a member of the New Jersey bar; the attorney consented to jurisdiction).

[2] One Board member disagreed with our conclusion on this issue and determined that we do not have subject matter jurisdiction in this case.

* * *

Lacking in this record is an explanation of why respondent appeared as counsel in two matters, without applying for pro hac vice admission, despite his obvious awareness that he was not admitted to the New Jersey bar. In his answer to the complaint, respondent stated as follows:

> . . . I did appear in Court on behalf of the Yeshiva. It was not my intention to appear as counsel for the Yeshiva, or to pass myself off as a member of the New Jersey Bar. This impression however was created by my inadvertence and failure to properly advise the Court that I was not admitted to practice in New Jersey. This inadvertence did create the false impression that I was duly admitted to appear in the Courts of the State of New Jersey. Although unintentional, I am solely responsible for the false impression I gave the Court and opposing counsel and for that I am truly remorseful.
>
> [Exhibit C-2]

We are unable to find that respondent's actions were the result of inadvertence. One does not inadvertently forget that one is not admitted to the New Jersey bar. Unfortunately, because respondent did not attend the DEC hearing, there is no testimony to clarify his position.

As to the specific allegations against respondent, the DEC's findings are correct. There is no doubt that respondent practiced law, in violation of the rules regulating the profession and RPC 5.5(a), and that he also violated RPC 3.3(a)(5) by failing to disclose to the court a material fact - namely, that he was not admitted to practice in New Jersey - knowing that the court could be misled by his omission.

The DEC's conclusion that the alleged violations of RPC 3.3(a)(1) and RPC 4.1(a) should be dismissed was also proper. Those rules require an affirmative statement by the attorney, which was not the case here.

As to the alleged violation of RPC 8.4(c), because we rejected as implausible respondent's contention that his conduct was inadvertent, we find that he knowingly made a misrepresentation to the court, in violation of that RPC. We were unable to agree with the DEC's interpretation of the rule.

The appropriate quantum of discipline remains at issue. In In re Alston, 154 N.J. 83 (1998), an attorney was reprimanded for practicing law while ineligible and failing to cooperate with disciplinary authorities. Similarly, in In re Namias, 157 N.J. 15 (1999), a reprimand was imposed for practicing law while ineligible, lack of diligence and failure to communicate with the client. Here, respondent's misconduct was in some respects not as severe as Alston's and Namias' because he cooperated fully with the DEC by entering into the stipulation and because there are no allegations of misconduct in connection with his handling of the underlying matters. On the other hand, his behavior was more egregious than that of Alston and Namias when he failed to take the simple steps necessary to be admitted pro hac vice for these two matters.

We also considered In re Bailey, 57 N.J. 451 (1971), where a different remedy was utilized. In Bailey, the Court suspended for one year an out-of-state attorney's privilege to apply for permission to appear pro hac vice based upon his ethics violations. The attorney

had violated the Canon of Professional Ethics relating to newspaper publicity.

By a majority of five-to-one we determined to reprimand respondent and to suspend his pro hac vice privileges for one year. As noted above, one member believed that we do not have subject matter jurisdiction in this case. One member recused himself. Two members did not participate.

We further required respondent to reimburse the Disciplinary Oversight Committee for administrative costs.

Dated: May 29 2001

By: _____
ROCKY L. PETERSON
Chair
Disciplinary Review Board

SUPREME COURT OF NEW JERSEY

DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Paul Haberman
Docket No. DRB 00-307

Argued: December 21, 2000

Decided: May 29, 2001

Disposition: Reprimand and suspension

Members	Disbar	Reprimand and One-year Suspension of pro hac vice privileges	Reprimand	Admonition	Dismiss	Disqualified	Did not Participate
Hymerling		X					
Peterson		X					
Boylan		X					
Brody					X		
Lolla		X					
Maudsley							X
O'Shaughnessy						X	
Schwartz							X
Wissinger		X					
Total:		5			1	1	2

Robyn M. Hill 8/2/01
Robyn M. Hill
Chief Counsel