SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 15-296
District Docket No. XB-2013-0039E

IN THE MATTER OF

ROBIN L. FRENCH

AN ATTORNEY AT LAW

Decision

Argued: February 18, 2016

Decided: May 31, 2016

Damian C. Shammas appeared on behalf of the District XB Ethics Committee.

Gerard E. Hanlon appeared on behalf of respondent.

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

This matter was before us on a recommendation for a censure filed by the District XB Ethics Committee (DEC). The formal ethics complaint charged respondent with violating RPC 5.5(a)(1) (unauthorized practice of law).

For the reasons set forth below, we determine to impose a reprimand.

Respondent was admitted to the New Jersey and New York bars in 1991. She is currently engaged in the practice of law, as in-house counsel to KPMG, in New York City. She has no disciplinary history in New Jersey.

In 1991, respondent was admitted to the New York and New Jersey bars and began her legal career as an associate at Cahill Gordon & Reindel LLP (Cahill), in New York City. In 1993 or 1994, respondent left Cahill for an in-house counsel position at Scholastic, Inc., also in New York City (Scholastic). In 1997, respondent left Scholastic for her current position, in-house counsel to KPMG, again, in New York City. Respondent does not maintain a private practice.

While employed by Cahill, respondent was unaware of the required annual assessment to the New Jersey Lawyers' Fund for Client Protection (CPF). In 1993, respondent became ineligible to practice law for failure to pay the annual assessment to the CPF.[1] Respondent claimed that, upon leaving Cahill for Scholastic, she

[1] Although paragraph twelve of the complaint alleges that respondent has not paid her annual assessment to the CPF since being employed at Cahill, respondent, having been admitted in 1991, was not required to pay an annual assessment in 1991 or 1992. See R. 1:28-2(b)(1), which provides that newly admitted attorneys are exempt from payment to the CPF for the calendar year of their admission and for the next calendar year. Thus, it is likely, given her ineligible status as of 1993, that respondent's annual assessment to the CPF was never paid, for any year, by either respondent or her respective employers.

received no information from either Cahill or the CPF regarding her annual assessment obligations.[2] Respondent also asserted that, during her employment with Scholastic and KPMG, she received neither correspondence from the CPF nor information from her employers' human resources departments about the annual assessment. She explained that, as a result, she remained unaware of her CPF obligation.

On September 26, 2005, respondent's law license was administratively revoked, pursuant to R. 1:28-2(c), for her failure to pay the annual assessment to the CPF for a period of seven consecutive years. Respondent claimed that she never received notice of the revocation and, thus, was unaware that her membership in the New Jersey bar had ceased.

More than eight years later, on October 28, 2013, on behalf of her friend, who owned Esperanza Salon (Esperanza) in Summit, New Jersey, respondent drafted and sent a letter to Tara Galatt, the owner of a competitor salon "down the street" from Esperanza. The letter demanded that Galatt cease and desist from employing Stephanie Wright, a former employee of Esperanza, who, prior to her termination, had executed an employment contract that

[2] New Jersey attorneys have an affirmative obligation to inform the CPF and the Office of Attorney Ethics of changes to their home and primary law office addresses, "either prior to such change or within thirty days thereafter." R. 1:20-1(c).

contained a one-year non-compete clause with an eight-mile radius. The letter stated that Galatt's failure to end Wright's employment "shall result in Esperanza Salon seeking a restraining order against Ms. Wright and your organization for breach of contract and seeking monetary damages."

For this October 28, 2013 correspondence, respondent created letterhead that identified her as an attorney-at-law with a New Jersey mailing address, her home address in Chatham. On receipt of respondent's letter, Galatt contacted Edwin Matthews, a New Jersey attorney. Before contacting respondent, Matthews consulted the New Jersey Lawyers Diary and discovered that respondent was not listed therein. Matthews then telephoned respondent to discuss the content of her letter. During that telephone conversation, Matthews made reference to the Lawyers Diary and questioned respondent about the status of her New Jersey law license. Respondent testified that she did not know what the Lawyers Diary was, and told Matthews that she was current with all of her New Jersey Continuing Legal Education (CLE) requirements.

On November 4, 2013, respondent sent a second letter, directly to Matthews, "reiterat[ing] the demand that Ms. Galatt cease and desist from any further violations of the [non-compete clause]." This time, respondent created letterhead that again identified her as an attorney-at-law, but omitted her New Jersey mailing address.

In response to this letter, Matthews telephoned respondent, informing her that her New Jersey law license had been administratively revoked. Respondent told Matthews that she was unaware of the revocation and terminated the telephone call.

Upon learning that her license had been revoked, respondent contacted the owner of Esperanza and informed her that she could no longer assist her with her legal troubles. Respondent admitted that she had drafted and sent the two letters and had the two telephone conversations with Matthews, all on behalf of Esperanza. She filed no pleadings, made no court appearances, and charged no fee for her services.

During the ethics hearing, respondent acknowledged that she had never advised the CPF regarding changes in her employment or home address. She further conceded that, since 1991, the year of her admission to the New Jersey bar, she had made no efforts to verify the status of her license, and remained wholly unaware of her CPF obligation. Respondent added that she personally pays all assessments required to maintain her New York law license, notices for which are mailed to her business address, at KPMG.

At the conclusion of the ethics hearing, the DEC raised the issue of jurisdiction, asking the parties whether, given the timing of respondent's misconduct (which occurred in 2013), the attorney disciplinary system could exercise jurisdiction in respect of any

misconduct that occurred after September 26, 2005, the effective date of the order revoking respondent's law license. The DEC invited the parties to brief the issue for their review. Respondent's brief, dated April 21, 2015, asserted that, pursuant to R. 1:28-2(c) and case law addressed below, the panel had no jurisdiction to discipline respondent. The presenter did not submit a brief on the issue.

The DEC ultimately concluded that the issue of jurisdiction should be preserved for the Court, pursuant to R. 1:20-4(e),[3] and proceeded to address its determinations regarding the charge against respondent. The DEC concluded that respondent had engaged in the unauthorized practice of law in New Jersey, in violation of RPC 5.5(a)(1), by representing Esperanza while ineligible to practice law in New Jersey. Specifically, the DEC found that respondent's conversations with the owner of Esperanza, her drafting and sending two letters on behalf of Esperanza, and her

[3] R. 1:20-4(e), which will be discussed in more detail, below, pertains to a respondent's obligation to set forth in his or her answer any constitutional challenges to the proceedings. Rule 1:20-15(h) is specifically applicable to the DEC's proceedings and process. That Rule states that "[c]onstitutional challenges to the proceedings **raised before the trier of fact** shall be preserved, without Board action, for Supreme Court consideration as a part of its review of the matter on the merits. Interlocutory relief may be sought only in accordance with Rule 1:20-16(f)(1)." (emphasis added)

telephone conversations with opposing counsel constituted the unauthorized practice of law.

The DEC determined, however, that respondent's misconduct was unintentional, as she was unaware that her license had been revoked. Specifically, the DEC found respondent "quite credible" during the hearing, emphasizing, in respect of her mens rea, that she had continued to take CLE courses, even after her license had been revoked, under the mistaken belief that she was fulfilling all requirements for maintenance of her New Jersey law license.

In mitigation, the DEC considered that there was no injury to the client, whom respondent had reticently represented due to their friendship; that respondent's misconduct was an isolated incident and was not for personal gain; that the representation was limited to two letters and two telephone conversations; that there was little likelihood that respondent would commit future misconduct; and that respondent had an unblemished disciplinary record in both New Jersey and New York.[4] The DEC concluded that there were no aggravating factors to consider.

Citing precedent discussed in detail below, the DEC recommended that respondent receive a censure.

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[4] Respondent's New York ethics history is not included in the record.

Following a de novo review of the record, we are satisfied that the DEC's finding that respondent's conduct was unethical is fully supported by clear and convincing evidence. As part of our analysis of this matter, however, we first address the threshold issue of law raised by the DEC – whether the New Jersey disciplinary system has jurisdiction over an attorney whose unethical conduct occurred after the attorney was no longer a member of the New Jersey bar.

On September 26, 2005, the Court administratively revoked respondent's law license, pursuant to R. 1:28-2(c), for her failure to pay the annual assessment to the CPF for a period of seven consecutive years. R. 1:28-2(c) states, in part, that "an Order of revocation shall not, however, preclude the exercise of jurisdiction by the disciplinary system in respect of any misconduct that occurred prior to Order's effective date."

Additionally, RPC 8.5(a) provides that "a lawyer not admitted in this jurisdiction is subject to the disciplinary authority of this jurisdiction if the lawyer provides or offers to provide any services in this jurisdiction." We find that the portion of R. 1:28-2(c) quoted above is not limiting language, but, rather, clarifying language, addressing the concept that any misconduct that occurred prior to an attorney's license revocation need not invoke the disciplinary authority of RPC 8.5(a), because the

misconduct would have occurred at the time the attorney was a licensed New Jersey attorney. We construe both RPC 8.5(a) and R. 1:28-2(c) *in pari materia,* and conclude that, once an attorney's membership in the New Jersey bar has ceased, including by the administrative revocation of his or her license, he or she still may be disciplined as any foreign attorney would be – pursuant to the disciplinary authority set forth under RPC 8.5(a).

As of 2005, respondent's law license had been revoked. In 2013, she provided legal representation to Esperanza, in New Jersey, while no longer a member of the New Jersey bar. In In re Torrellas, 213 N.J. 597 (2013), we examined, as a matter of first impression, the issue of the unauthorized practice of law occurring after an attorney's license had been revoked pursuant to R. 1:28-2(c).

In Torrellas, the attorney's license was administratively revoked, in September 2007, for failure to pay the annual assessment to the CPF. Although he practiced with a New York law firm, he made two or three appearances in New Jersey, after the revocation, including attendance at a trial call. Torrellas entered into a stipulation, admitting his unauthorized practice of law, in violation of RPC 5.5(a). No formal ethics complaint was filed and, accordingly, respondent never filed a verified answer.

We concluded that the disciplinary system had jurisdiction over Torrellas, citing In re Haberman, 170 N.J. 197 (2001), and In re Boyajian, 202 N.J. 332 (2010),[5] and further noting that Torrellas had "submitted himself to the jurisdiction of the disciplinary system, through his stipulation." In the Matter of Miguel A. Torrellas, DRB 12-302 (March 28, 2013) (slip op. at 8).

Haberman was a New York, but not New Jersey-admitted, attorney who maintained a New Jersey law office with a member of the New Jersey bar. In the Matter of Paul E. Haberman, DRB 00-307 (May 29, 2001) (slip op. at 2). In two instances, Haberman represented New Jersey clients in New Jersey. Id. at 3. Raising the issue sua sponte, we determined the Court had jurisdiction to discipline Haberman, citing RPC 8.5(a) and further noting that "respondent entered into a stipulation in this matter, thereby subjecting himself to the disciplinary system's jurisdiction." Id. at 5.

The Court agreed with our determination, finding Haberman guilty of having violated RPC 5.5(a) (unauthorized practice of law), as well as RPC 3.3(a)(5) and RPC 8.4(c) (failure to inform the court that he was not admitted to the New Jersey bar). The Court reprimanded Haberman, without comment on the issue of

[5] Both Haberman and Boyajian involved attorneys who were not admitted to practice in New Jersey but who, nevertheless, engaged in the practice of law in this state.

jurisdiction, and suspended his right to apply for pro hac vice admission in New Jersey for one year.

Nine years after the Haberman decision, Boyajian was decided. In Boyajian, the attorney, who was admitted in California, but not in New Jersey, also stipulated to the conduct that led to his disciplinary matter. In the Matter of Jack H. Boyajian, DRB 08-264 (March 12, 2009) (slip op. at 1). Specifically, from 2002 through 2004, Boyajian was a principal and the nonlawyer administrator of the firm Boyajian and Brandon, formerly JBC & Associates, P.C. (JBC), which was engaged in the business of collecting debts owed to its clients. Id. at 3. JBC employed attorneys who filed suits in New Jersey courts, as well as nonlawyer debt collectors and supervisors. Id. at 3-4. Boyajian did not properly supervise JBC's attorneys and employees and failed to discover their unethical and unlawful actions. Id. at 4.

Again raising the issue sua sponte, we determined that the Court had jurisdiction to discipline Boyajian, pursuant to the plain language of RPC 8.5(a). Id. at 1. No mention was made of Boyajian's "submission to jurisdiction" via the stipulation he had entered. Further, Haberman was neither cited nor relied upon in the Boyajian decision. The Court imposed a reprimand on Boyajian, based on our recommendation.

Although neither attorney had challenged the jurisdiction of the disciplinary system to sanction them, the Haberman and Torrellas decisions noted that the attorneys had "submitted," by their stipulations, to the jurisdiction of the Court for discipline. RPC 8.5(a), however, contains no such requirement and has not been challenged, let alone successfully challenged, on constitutional grounds.

Following the Torrellas decision, In re Feinstein, 216 N.J. 339 (2013), and In re Hoffberg, 219 N.J. 426 (2014), also addressed the discipline of attorneys who had engaged in the unauthorized practice of law after their licenses had been revoked, pursuant to R. 1:28-2(c). These three cases constitute all precedent for disciplining lawyers who practiced law in New Jersey after administrative revocation of their license to do so.

Despite the stipulations entered into by both respondents, neither the Feinstein nor Hoffberg decisions recited the "submission to jurisdiction" concept discussed in Torrellas. Simply put, the "submission to jurisdiction" component of Torrellas is not required for the Court to discipline attorneys pursuant to RPC 8.5(a).

Under the facts of this case, RPC 8.5(a) clearly subjects respondent to the jurisdiction of the New Jersey disciplinary system. Additionally, the decisions in Haberman and Boyajian are

not on all fours with respondent's misconduct, especially given the procedural stance of this case. Specifically, respondent filed an answer to the formal complaint and the matter proceeded to a hearing, where respondent appeared with counsel and testified in her defense, without objection or challenge to jurisdiction.

Any constitutional challenge to jurisdiction by respondent was required to have been raised as part of her verified answer, pursuant to R. 1:20-4(e). Any such challenge would have been preserved for review by the Court, in accordance with R. 1:20-15(h), as a part of its review of the matter on the merits.

Respondent was well aware of her obligation to raise, in her answer, any constitutional challenges she wished to assert. Not only does R. 1:20-4(e) so require, but also the form complaint service letter specifically informed her of her obligation to raise any such challenges in her answer. Respondent's verified answer, however, asserted no constitutional challenges to the ethics proceedings that had been initiated against her. Rather, as previously stated, respondent subsequently appeared at the DEC hearing, where she was represented by counsel and provided testimony, without objection to the DEC's exercise of disciplinary authority over her.

Respondent, thus, neither raised nor preserved any constitutional challenge to the New Jersey disciplinary system's

jurisdiction to sanction her for violating RPC 5.5(a)(1). That notwithstanding, in our view, it is an argument without merit under the plain language of RPC 8.5(a).

We turn now to the appropriate measure of discipline to be imposed for respondent's misconduct. In Torrellas, we determined that, when an attorney practices law after his or her license has been administratively revoked, a three-month suspension will be imposed, if the attorney was not aware of the revocation, and there are no other aggravating factors. Because Torrellas, however, did not deny that he had received the revocation notice, the discipline was enhanced to a six-month suspension.

In addition, the Court ordered that Torrellas "shall not appear pro hac vice in any New Jersey matter until further Order;" that, if he applied for readmission to the New Jersey bar, his "readmission shall be withheld for a period of six months;" and that he "shall pay the basic administrative costs and actually-incurred disciplinary expenses in the prosecution of this matter."

As previously noted, after the Torrellas decision, Feinstein and Hoffberg also addressed the discipline of attorneys who had engaged in the unauthorized practice of law after their licenses had been administratively revoked, pursuant to R. 1:28-2(c). In Feinstein, we announced, based on the decision in Torrellas, that "the presumptive discipline for practicing law while on the revoked

list is a three-month suspension." In the Matter of Steven C. Feinstein, DRB 13-066 (October 25, 2013) (slip op. at 12). In both Feinstein and Hoffberg, however, the attorneys had knowledge of the revocation of their licenses, plus there were serious aggravating factors to be weighed. Thus, one-year suspensions, with conditions, were imposed on both attorneys.

In this case, the DEC found credible respondent's testimony that she had no knowledge of the revocation of her license. Upon a review of the record, and in light of the panel's opportunity to observe and question respondent during the hearing, we accept the DEC's credibility determination on this issue. As set forth above, the DEC found multiple mitigating factors and determined that, under the reasoning of Torellas, a censure was the proper sanction to impose.

Although we accept the DEC's credibility assessment, as well as its findings in mitigation, we are troubled that respondent made no effort, for over fourteen years, to ensure her compliance with CPF obligations, and no effort, for over twenty years, to verify her status as a New Jersey attorney. Nevertheless, respondent's misconduct was limited to two letters and two telephone calls, and was motivated by her desire to help a friend. Moreover, respondent genuinely believed she was still a member of the New Jersey bar, as evidenced by her efforts to satisfy her CLE

obligations. When respondent learned that her New Jersey law license had been administratively revoked, she immediately ceased her improper representation of Esperanza.

Accordingly, we adopt the DEC's findings as to mitigation, but depart from the DEC's determination regarding the quantum of discipline to be imposed. Given the specific facts of this case, a significant downward departure from the presumptive sanction of a three-month suspension is appropriate. We determine that the proper quantum of discipline in this case is a reprimand.

Additionally, respondent should be barred from applying for admission pro hac vice in any New Jersey matter until further Order of the Court.

Member Singer concurs with the determination for a reprimand in this case but does not agree that there should be a "presumptive" three-month suspension for practicing law when an attorney's license is administratively revoked. Rather, she believes that the authority for such a presumption is weak and that, as in most discipline cases, the amount of discipline imposed should depend on the circumstances.

Members Gallipoli and Zmirich voted for a three-month suspension.

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
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Robin L. French
Docket No. DRB 15-296

Argued: February 18, 2016

Decided: May 31, 2016

Disposition: Reprimand

Members	Disbar	Three-month Suspension	Reprimand	Dismiss	Disqualified	Did not participate
Frost			X			
Baugh			X			
Boyer			X			
Clark			X			
Gallipoli		X				
Hoberman			X			
Rivera			X			
Singer			X			
Zmirich		X				
Total:		2	7			

Ellen A. Brodsky
Chief Counsel