SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 15-380
District Docket No. XIV-2014-0472E

IN THE MATTER OF	:
QUEEN E. PAYTON	:
AN ATTORNEY AT LAW	:

Decision

Argued: March 17, 2016

Decided: July 11, 2016

Jason Douglas Saunders appeared for the Office of Attorney Ethics.

Respondent waived appearance.

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

This matter was before us on a disciplinary stipulation between the Office of Attorney Ethics (OAE) and respondent, submitted pursuant to R. 1:20-15(f). Respondent admitted that she violated RPC 5.5(a)(2) (assisting a person who is not a member of the bar in the performance of activity that constitutes the unauthorized practice of law), RPC 8.4(a) (knowingly assisting another to violate the RPCs), and RPC

8.4(d) (conduct prejudicial to the administration of justice) by failing to comply with R. 1:20-20(e). We determine to impose a reprimand.

Respondent was admitted to the New Jersey bar in 2001. On November 3, 2005, she received an admonition for practicing law between August 2003 and September 2004 while ineligible to do so, based on her failure to pay the annual attorney assessment to the New Jersey Lawyers' Fund for Client Protection (CPF). In the Matter of Queen E. Payton, DRB 05-250 (November 3, 2005).

On July 14, 2011, respondent was reprimanded for, once again, practicing law while ineligible, based on her failure to pay the 2010 CPF annual attorney assessment. In re Payton, 207 N.J. 31 (2011).

At all times relevant to this matter, respondent practiced law in the Rahway law firm of Payton & Payton, LLP, with Ben Payton (Ben), her law partner and husband of forty-four years.[1]

On January 28, 2011, the Supreme Court entered an Order temporarily suspending Ben from the practice of law for his failure to comply with a fee arbitration determination. By virtue of that Order, R. 1:20-20(b)(15) required him to file an affidavit with the OAE specifying how he had complied with the

[1] Ben, a member of the New Jersey bar since 1992, passed away in August 2015.

provisions of the rule governing suspended attorneys. Ben failed to file the required affidavit.[2]

On November 19, 2013, the Honorable Karen M. Cassidy, A.J.S.C., referred a matter to the OAE, alleging that Ben had engaged in the unauthorized practice of law.

On September 26, 2014, the OAE sent respondent a grievance alleging that, because Ben was her law partner, she was in violation of R. 1:20-20(e), which requires an attorney who is affiliated with a disciplined attorney to take responsible actions to ensure that the suspended attorney complies with the Rule and, further, to file the required affidavit if the disciplined attorney fails to do so.

The grievance requested respondent's written reply by October 14, 2014. Because respondent failed to reply, the OAE scheduled a demand audit for December 2, 2014.

After the demand audit was completed, respondent failed to file the affidavit for the Payton & Payton law firm, as required by R. 1:20-20(e). It was not until December 18, 2014, some three years after Ben's suspension, that respondent finally provided the OAE with an affidavit of compliance with R. 1:20-20. In it,

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[2] Ben later was suspended for three months, on October 17, 2012, in a discipline matter, and temporarily suspended again on May 22, 2014. He was never reinstated.

she represented that Ben had not been employed, had not been permitted or authorized to practice law, had not performed legal services, and had not shared office space with respondent, since May 2012. Respondent further certified that Ben had not used "stationary [sic], sign or advertisement . . . suggesting that he is entitled to practice law." Finally, respondent's affidavit of compliance stated that she had assumed the representation in fifteen to twenty client matters that Ben had been handling at the time of his suspension.

Respondent admitted that the documents from Judge Cassidy revealed that, after Ben's suspension, he continued to represent the Herald of Truth Church, attending church meetings and writing a June 15, 2012 letter to church leaders and the congregation (the leadership transition letter). Ben's letter stated, among other things, that he and the Payton & Payton law firm represented the church. He used Payton & Payton letterhead and signed the letter "Ben Payton, Esq."

In 2013, respondent defended the church in litigation in the Superior Court, Union County, involving the guardianship of the former pastor, Reverend Bernice Jackson, whose retirement as pastor was the subject of the leadership transition letter. The July 2013 complaint in that litigation sought, at paragraph nine, to establish that Jackson's last day as pastor was

June 15, 2012. Attached in support of that claim is a copy of the leadership transition letter, which Ben concluded as follows:

> Finally, for those of you who aren't aware of who we are, the Law Firm of Payton & Payton, LLP, serves as legal counsel to Herald of Truth Church, Inc., and Reverend Dr. Bernice Jackson, respectively. As legal counsel, we are authorized to act on behalf of the church and and [sic] Reverend Dr. Bernice Jackson.
>
> [S¶30;Ex.2A.]

Respondent prepared an August 20, 2013 answer on behalf of the church, in which she admitted paragraph nine of the complaint, that Reverend Jackson's last day as pastor was June 15, 2012, as established by the leadership transition letter. Respondent stipulated (apparently having read the letter when preparing the answer), that she knew about her husband's use of Payton & Payton letterhead during his suspension.

Following Ben's 2011 temporary suspension, respondent, too, used law firm letterhead and pleadings that referred to Ben as a partner in the law firm. Moreover, respondent failed to timely notify law firm clients of her husband's suspension, leaving clients with the impression that Ben was licensed to practice law on their behalf.

Thereafter, and despite respondent's actual knowledge of Ben's leadership transition letter, she failed to take

corrective action, thereby facilitating Ben's continued unauthorized practice of law.

Moreover, according to the stipulation, respondent's affidavit of compliance "represented to the [Supreme] Court and the OAE that Ben Payton had not engaged in the unauthorized practice of law and did not use stationary [sic] with the firm suggesting that he was entitled to practice law."

Respondent stipulated that, by her actions, she assisted Ben in the unauthorized practice of law while suspended, violations of RPC 5.5(a)(2), RPC 8.4(a), and RPC 8.4(d).

In aggravation, the parties cited respondent's aforementioned 2005 admonition and 2011 reprimand, both for practicing while ineligible, as well as her failure to act once she became aware of Ben's suspension.

In mitigation, respondent was employed primarily in the health care field after her 2001 admission to the bar. Her involvement with Payton & Payton had been as a part-time attorney. More recently, when Ben became terminally ill and was no longer able to run the law firm, respondent was compelled to take on more and more of those duties. In addition, since the filing of the ethics grievance, respondent experienced several "health incidents" and hospitalizations of her own.

The OAE recommended a reprimand, citing In re Girdler, 179 N.J. 227 (2004) for the proposition that a reprimand is the threshold sanction for attorneys who fail to comply with R. 1:20-20, and In re Silber, 100 N.J. 517 (1985), where the attorney was reprimanded after his law clerk made an unsolicited court appearance on behalf of a client, contrary to the attorney's instructions. When the attorney learned of the appearance, however, he took no action to alert the court to that event.

Following a de novo review of the record, we are satisfied that the stipulation clearly and convincingly establishes that respondent's conduct was unethical.

Respondent stipulated that, by her actions, she assisted or permitted Ben's unauthorized practice of law during his period of suspension, violations of RPC 5.5(a)(2) and RPC 8.4(a). In addition, when Ben failed to file a 1:20-20(b)(15) compliance affidavit, R. 1:20-20(e) shifted the burden of that filing to respondent, as an affiliated attorney in the law firm. She failed to do so for three years, in contravention of RPC 8.4(d) and R. 1:20-20(e).

The remaining determination is the appropriate quantum of discipline for respondent's admitted ethics violations. Although there are numerous cases in which attorneys have assisted

nonlawyers in the unauthorized practice of law, there are relatively few instances of lawyers assisting suspended or disbarred lawyers. See, e.g., In re Bevacqua, 174 N.J. 296 (2002) (reprimand imposed on attorney who allowed a lawyer who was not admitted in New Jersey to conduct a deposition in New Jersey; attorney also was guilty of gross neglect, pattern of neglect, lack of diligence, failure to communicate with clients, failure to explain matters to the extent reasonably necessary to permit clients to make informed decisions about the representation, failure to provide written retainer agreements, and failure to promptly return a client's file; mitigating factors included Bevacqua's relative inexperience at the time of the misconduct and his lack of venality); In re Ezon, 172 N.J. 235 (2002) (reprimand imposed on attorney for assisting a disbarred lawyer (his father) in the practice of law; by executing a stipulation, Ezon misled the court and other attorneys that, along with his father, he represented the client; in mitigation, we considered the fact that the disbarred lawyer that Ezon assisted was his father); In re Belmont, 158 N.J. 183 (1999) (reprimand for attorney who assisted his partner, a Pennsylvania attorney, in the unauthorized practice of law by permitting him to settle eight personal injury cases in New Jersey; the attorney also improperly calculated his contingent fee on the recovery, improperly endorsed his clients' names on

settlement checks in five cases, failed to deposit the settlement checks in a trust account in New Jersey, failed to maintain a bona fide office in New Jersey, and failed to turn over a file to a client); In re Hancock, 221 N.J. 259 (2015) (motion for reciprocal discipline; six-month suspension for attorney who assisted Burton Pugach, a disbarred lawyer, in the unauthorized practice of law; the client "hired" Pugach to represent her in a matrimonial matter; at Pugach's request, Hancock appeared at appellate oral argument, where he misrepresented that he had been retained on a pro bono basis, when he had received $1,000 for the representation; he also failed to prepare a written fee agreement in that matter; in a separate matter, Hancock signed bankruptcy petitions that Pugach had prepared for another client and failed to supervise Pugach, who later "unlawfully conducted[ed] the bankruptcy proceedings" in Hancock's name; Hancock also made conflicting, false, and misleading statements to the bankruptcy court about his and Pugach's involvement in the bankruptcy matter); In re Kronegold, 197 N.J. 22 (2008) (companion case to Hancock; six-month suspension, on a motion for reciprocal discipline, for attorney who assisted the same disbarred lawyer, Pugach, in the unauthorized practice of law; the same matrimonial client who had "hired" Pugach paid Kronegold for legal services; Kronegold signed a notice of appeal at Pugach's request; Pugach

then prepared and filed a brief with the appellate court, using Kronegold's name and purported signature; Kronegold also failed to prepare a written fee agreement; prior reprimand); In re Cermack, 174 N.J. 560 (2002) (attorney consented to a six-month suspension after he entered into an agreement to permit a suspended lawyer to continue to represent his own clients while Cermack was named attorney of record and made court appearances; attorney also displayed a lack of diligence, failed to keep clients reasonably informed about the status of their matters, failed to explain matters to the extent reasonably necessary to permit clients to make informed decisions, failed to comply with recordkeeping requirements, failed to protect his clients' interests on termination of the representation, knowingly assisted another to violate the Rules of Professional Conduct, and engaged in conduct prejudicial to the administration of justice) and In re Garcia, 195 N.J. 164 (2007) (on motion for reciprocal discipline from Pennsylvania, fifteen-month suspension imposed on attorney who assisted her husband, a suspended attorney, in the unauthorized practice of law; the attorney used misleading letterhead and the law firm name Feingold Feingold & Garcia, thus implying that her husband continued to practice law with the firm; the attorney also lacked candor to a tribunal, when she told two judges that she and her husband operated different law firms and when she

told a third judge that the law firm of Feingold Feingold & Garcia included respondent and Feingold's niece; the attorney also filed frivolous lawsuits and knowingly made false allegations about judges).

Here, respondent also failed to file the affidavit required by R. 1:20-20(e), upon Ben's failure to do so. In almost all of the R. 1:20-20 cases, the attorney who failed to file the required affidavit was the suspended attorney. In In the Matter of Nancy R. Wood, DRB 07-180 (December 5, 2007), we reviewed an attorney's failure to comply with R. 1:20-20(a) after her husband, a suspended attorney and her law partner, failed to file the required affidavit. In assessing the appropriate quantum of discipline, we considered cases of attorneys who failed to comply with R. 1:20-20 upon their own suspension.

The threshold measure of discipline to be imposed for an attorney's failure to file a R. 1:20-20(b)(15) affidavit is a reprimand. In re Girdler, supra, 179 N.J. 227. In the Matter of Richard B. Girdler, DRB 03-278 (November 20, 2003) (slip op. at 6). The actual discipline imposed may be different, if the record demonstrates mitigating or aggravating circumstances. Ibid. Examples of aggravating factors include the attorney's failure to respond to the OAE's specific request that the affidavit be filed, the attorney's failure to answer the

complaint, and the existence of a disciplinary history. Ibid. Here, respondent has a disciplinary history – an admonition and a reprimand – but the OAE did not specifically request that she file the affidavit of compliance and she filed an answer to the ethics complaint.

Respondent's misconduct was not as serious as that committed by the attorneys in Hancock, Krongold, Cermack, and Garcia. Unlike those attorneys, respondent did not craft a specific plan to facilitate her husband's continued practice during his period of suspension. Thus, in our view, a reprimand is the baseline sanction for each of respondent's infractions above: her assistance in Ben's unauthorized practice of law and her own failure, for three years, to file the law firm's R. 1:20-20 affidavit of compliance.

Respondent's misconduct is compounded by the contents of the affidavit that she finally filed on behalf of Payton & Payton. In it, she stated that Ben had not been employed, permitted, or authorized to practice law, to perform legal services, or to share office space with her after May 2012. Yet, she knew that her husband had represented the church in June 2012, long after his January 2011 temporary suspension had taken effect. She, too, used misleading letterhead that named Ben as an attorney of the firm, after he was suspended. In additional

aggravation, respondent has a 2005 admonition and a 2011 reprimand for practicing while ineligible for failure to pay the annual attorney assessment to the CPF.

The OAE cited an additional aggravating factor, respondent's failure to remediate Ben's unauthorized practice of law, despite opportunities to do so, thus allowing his unauthorized practice of law to continue unabated.

In mitigation, respondent's husband was terminally ill over the last several years of his life. Respondent then became responsible for all aspects of the law firm, having previously acted only in a part-time capacity. It is possible, as she suggests, that her husband's poor health, as well as her own medical issues, played a role in poor decision-making when confronted with Ben's continued practice of law and her own expedient, but misleading, affidavit of compliance to the Court. Finally, respondent entered into a disciplinary stipulation, thereby saving disciplinary system resources by acknowledging her misconduct.

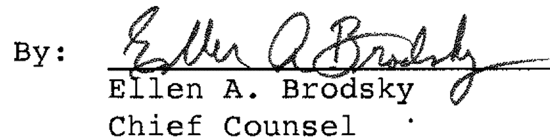
In our view, the significant mitigation – a terminally ill husband of forty-four years, the additional duties respondent assumed when running the law firm for the first time, and her own medical issues – outweighs the aggravation. Thus, we

determine that a reprimand, as recommended by the OAE, will suffice for the totality of respondent's misconduct.

Vice-Chair Baugh did not participate.

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

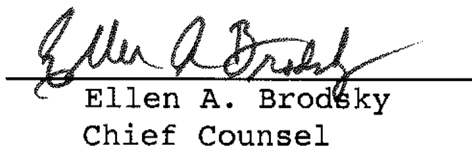
In the Matter of Queen E. Payton
Docket No. DRB 15-380

Argued: March 17, 2016

Decided: July 11, 2016

Disposition: Reprimand

Members	Disbar	Suspension	Reprimand	Did not participate
Frost			X	
Baugh				X
Boyer			X	
Clark			X	
Gallipoli			X	
Hoberman			X	
Rivera			X	
Singer			X	
Zmirich			X	
Total:			8	1



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