

Supreme Court Of New Jersey
Disciplinary Review Board
Docket No. DRB 18-330
District Docket No. XIV-2017-0643E

In The Matter Of

John Joseph Garagozzo

An Attorney At Law

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Decision

Argued: November 15, 2018

Decided: March 25, 2019

Eugene A. Racz appeared on behalf of the Office of Attorney Ethics.

Respondent failed to appear, despite proper notice.

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), following an order from the Supreme Court of Pennsylvania suspending respondent for two years, effective October 6, 2017. Respondent was found guilty of violating the equivalents of New Jersey RPC 5.5(a)(1) (unauthorized practice of law); RPC 7.1(a) (false or misleading communication about the lawyer, the lawyer's

services, or any matter in which the lawyer has or seeks a professional involvement); RPC 8.1(a) (knowingly making a false statement of material fact in connection with a disciplinary matter); RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation); and RPC 8.4(d) (conduct prejudicial to the administration of justice).

The OAE alleges that respondent is further guilty of violating the equivalents of New Jersey RPC 1.4(d) (failure to advise a client of the limitations of the lawyer's conduct, when a client expects assistance not permitted by the Rules); RPC 1.16(a)(1) (failure to withdraw when the representation will result in a violation of the RPCs); and RPC 7.5(a) (improper use of a professional designation that violates RPC 7.1).

The OAE recommends the imposition of a censure. Respondent made no submission for our consideration. For the reasons set forth below, we determine to impose a censure.

Respondent earned admission to the New Jersey bar in 1983, the Pennsylvania bar in 1982, and the Arizona bar in 1994. He has no prior discipline in New Jersey. On September 12, 2016, however, the Court entered an Order declaring respondent ineligible to practice, based on his failure to pay his annual registration fee to the New Jersey Lawyers' Fund for Client Protection (CPF). On November 21, 2016, he also became ineligible to

practice for failure to comply with New Jersey continuing legal education (CLE) requirements. He remains ineligible, on both counts, to date.

The Disciplinary Board of the Supreme Court of Pennsylvania issued a report (DBR), dated August 8, 2017, on which the Supreme Court of Pennsylvania relied in determining to suspend respondent. The facts of the case are as follows.

Effective January 8, 2014, the Supreme Court of Pennsylvania issued an order suspending respondent from the practice of law for noncompliance with Pennsylvania CLE requirements.¹ During the six months prior to the effective date, the Pennsylvania CLE Board had twice warned respondent, in writing, of his impending suspension. Despite receiving the warning letters, respondent failed to correct his CLE deficiency. Subsequently, the Pennsylvania Attorney Registrar served respondent with a copy of his suspension order, along with copies of the applicable Pennsylvania rules, guidance on complying with his administrative suspension, and instructions on rectifying his CLE status. Respondent received the Attorney Registrar's letter, and, thus, knew of his suspended status.

¹ Although termed a "suspension," the Supreme Court of Pennsylvania's order is equivalent to an order from the Supreme Court of New Jersey deeming an attorney ineligible to practice law for failure to comply with an administrative requirement.

Despite that knowledge, respondent (i) failed to comply with Pennsylvania's rules governing suspended attorneys; (ii) continued to maintain an office for the practice of law; (iii) continued to hold himself out as eligible to practice law, through the use of attorney letterhead; and (iv) practiced law, while ineligible to do so, in at least four matters, on behalf of three clients.

Specifically, in October 2014, Reynaldo Cruz retained respondent in connection with a Philadelphia Municipal Court matter. Respondent appeared in that court on behalf of Cruz on December 4, 2014, and March 4, April 15, and May 21, 2015, resulting in a guilty plea by Cruz and admission into a diversionary program.

In April 2015, James Jones retained respondent in connection with a Philadelphia Municipal Court matter. Respondent appeared in that court on behalf of Jones on April 16, May 1, and June 3, 2015, resulting in a guilty plea by Jones and admission into a diversionary program.

In November 2014, respondent represented E.R. at a hearing before an Administrative Law Judge, successfully expunging a child abuse report implicating E.R. Subsequently, on June 4, 2015, respondent appeared on behalf of E.R. in a child custody case in the Family Court Division of the Court of Common Pleas of Philadelphia County.

During the period that he was administratively suspended, respondent also continued to provide pre-paid legal services to members of a local union.² Moreover, respondent failed to inform his clients, the judges, and opposing counsel that he had been suspended, as Pennsylvania Rules of Disciplinary Enforcement (Pa.R.D.E.) 217(a) requires.

On April 7, 2015, respondent satisfied the CLE requirements necessary to seek reinstatement to active status in Pennsylvania. On June 8, 2015, he filed the necessary paperwork with the Attorney Registration Office, along with required fees, seeking his reinstatement to active practice. Included in the documents he submitted was a Statement of Compliance, dated June 1, 2015, in which he falsely certified that he had “fully complied with the provisions of the Order of the Supreme Court [of Pennsylvania], with the applicable provisions of the [Pa.R.D.E.] and with the applicable Disciplinary Board Rules.” On June 8, 2015, respondent was reinstated to the active practice of law in Pennsylvania.

On April 12, 2016, the Pennsylvania Office of Disciplinary Counsel (PODC) filed a formal ethics complaint against respondent. He failed to answer the complaint, and, despite proper notice and service, failed to appear

² The record does not set forth the number of client matters at issue in respect of the union representation.

at both the prehearing conference and the ethics hearing, both of which proceeded in absentia.

The PODC summarized respondent's misconduct, stating that

he was transferred to administrative suspension, received notice of his status and his inability to practice law, and continued to not only represent current clients, but obtained new client representation. He represented three clients, including at trial, without advising these clients, the courts or opposing counsel that he was prohibited from such representation. In addition, Respondent continued to serve as a provider of pre-paid legal services to a local union. Respondent's unauthorized practice of law in violation of the Supreme Court's administrative suspension order, occurred over a period of approximately 18 months. Thereafter, Respondent chose to ignore the serious charges of misconduct brought by [the PODC].

[DBR22-23].

As noted above, the Disciplinary Board of the Supreme Court of Pennsylvania determined that respondent violated the equivalents of New Jersey RPC 5.5(a)(1), RPC 7.1(a); RPC 8.1(a), RPC 8.4(c), and RPC 8.4(d), as well as multiple provisions of the Pa.R.D.E., and recommended the imposition of a two-year suspension. The Supreme Court of Pennsylvania agreed in respect of both the findings and quantum of discipline, and, thus, imposed a two-year suspension on respondent.

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), "a final

adjudication in another court, agency or tribunal, that an attorney admitted to practice in this state . . . is guilty of unethical conduct in another jurisdiction . . . shall establish conclusively the facts on which it rests for purposes of a disciplinary proceeding in this state.” Thus, with respect to motions for reciprocal discipline, “[t]he sole issue to be determined . . . shall be the extent of final discipline to be imposed.” R. 1:20-14(b)(3).

In Pennsylvania, the standard of proof in attorney disciplinary matters is that the “[e]vidence is sufficient to prove unprofessional conduct if a preponderance of the evidence establishes the conduct and the proof . . . is clear and satisfactory.” Office of Disciplinary Counsel v. Kissel, 442 A.2d 217 (Pa. 1982) (citing In re Berlant, 328 A.2d 471 (Pa. 1974)). Moreover, “[t]he conduct may be proven solely by circumstantial evidence.” Office of Disciplinary Counsel v. Grigsby, 425 A.2d 730 (Pa. 1981) (citations omitted).

We note that, in this case, the Pennsylvania disciplinary matter proceeded as a default. In both New Jersey and Pennsylvania, a respondent’s failure to file a verified answer to the complaint is deemed an admission that the allegations of the complaint are true and that they provide a sufficient basis for the imposition of discipline. See R. 1:20-4(f)(1) and Pa.R.D.E. 208(b)(3).

Reciprocal discipline proceedings in New Jersey are governed by R.

1:20-14(a)(4), which provides in pertinent part:

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;

(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.

Subsection (E) applies in this matter because the unethical conduct warrants substantially different discipline.

Accordingly, we adopt the findings made by the Disciplinary Board of the Supreme Court of Pennsylvania, and determine that respondent's conduct violated New Jersey RPC 5.5(a)(1), RPC 7.1(a), RPC 7.5(a), RPC 8.1(a), and RPC 8.4(c). We conclude, however, that the record contains insufficient

evidence to support findings that respondent violated RPC 1.4(d), RPC 1.16(a)(1), or RPC 8.4(d).

Effective January 8, 2014, respondent was suspended from the practice of law in Pennsylvania. Despite that status, he (i) failed to comply with Pennsylvania's rules governing suspended attorneys; (ii) continued to maintain an office for the practice of law; (iii) continued to hold himself out as eligible to practice law, through the use of attorney letterhead; and (iv) practiced law, while ineligible to do so, in four matters on behalf of at least three clients. Moreover, he failed to inform his clients, the judges, and opposing counsel that he had been suspended, as Pa.R.D.E. 217(a) requires, leaving his clients with the belief that he was authorized to represent them. Respondent, thus, violated the New Jersey equivalents of RPC 5.5(a)(1), RPC 7.1(a), RPC 7.5(a), and RPC 8.4(c).

Then, after respondent had rectified his CLE status and applied for reinstatement with the Pennsylvania Attorney Registration office, he falsely certified that he had "fully complied with the provisions of the Order of the Supreme Court [of Pennsylvania], with the applicable provisions of the [Pa.R.D.E.] and with the applicable Disciplinary Board Rules." His false certification resulted in his reinstatement to the practice of law in

Pennsylvania. Respondent, thus, violated the New Jersey equivalents of RPC 8.1(a) and RPC 8.4(c).

The additional violations of RPC 1.4(d) (failure to advise a client of the limitations of the lawyer's conduct, when a client expects assistance not permitted by the Rules) and RPC 1.16(a)(1) (failure to withdraw when the representation will result in a violation of the RPCs) that the OAE urges us to find are duplicative of the substance of the RPC 5.5(a)(1) violation and, thus, we dismiss them. The violation of RPC 8.4(d) found in Pennsylvania is not supported by sufficient evidence in the record to warrant a finding of the New Jersey equivalent of that RPC. Specifically, the record is bereft of evidence that, as an example, court resources were wasted in connection with respondent's representation of clients while ineligible to practice law.

The only remaining issue for our determination is the appropriate quantum of discipline to be imposed for respondent's misconduct.

Ordinarily, when an attorney practices while ineligible, an admonition will be imposed, if he or she is unaware of the ineligibility. See, e.g., In the Matter of Jonathan A. Goodman, DRB 16-436 (March 22, 2017) (attorney practiced law during two periods of ineligibility; he was unaware of his ineligibility); In the Matter of James David Lloyd, DRB 14-087 (June 25, 2014) (attorney practiced law during an approximate thirteen-month period of

ineligibility; among the mitigating factors considered was his lack of knowledge of the ineligibility); and In the Matter of Adam Kelly, DRB 13-250 (December 3, 2013) (during a two-year period of ineligibility for failure to pay the annual assessment to the CPF, the attorney handled at least seven cases that the Public Defender's Office had assigned to him; in mitigation, the record contained no indication that the attorney was aware of his ineligibility, and he had no history of discipline since his 2000 admission to the New Jersey bar).

A reprimand or greater discipline may be imposed when the attorney has an extensive ethics history, has been disciplined for conduct of the same sort, has committed other ethics improprieties, or is aware of the ineligibility and practices law nevertheless. See, e.g., In re Moskowitz, 215 N.J. 636 (2013) (reprimand; attorney practiced law knowing that he was ineligible to do so); In re Jay, 210 N.J. 214 (2012) (reprimand; attorney was aware of ineligibility and practiced law nevertheless; prior three-month suspension for possession of cocaine and marijuana); In re (Queen) Payton, 207 N.J. 31 (2011) (reprimand; attorney who practiced law while ineligible was aware of her ineligibility and had received an admonition for the same violation); In re D'Arienzo, 217 N.J. 151 (2014) (censure for attorney whose recklessness in not ensuring that payment was sent to the CPF was deemed "akin to knowledge on his part;" in aggravation, the attorney had an extensive disciplinary history, which included

a 2013 reprimand for practicing while ineligible); In re Macchiaverna, 214 N.J. 517 (2013) (attorney censured for practicing law while ineligible, knowing that he was ineligible, and for recordkeeping violations; an aggravating factor was the attorney's prior reprimand for recordkeeping violations that led to the negligent misappropriation of client funds; the attorney also did not appear on the return date of the Court's Order to Show Cause); In re Lynch, 186 N.J. 246 (2006) (censure for attorney who, aware of his ineligibility, practiced law during that period; the attorney had a prior admonition and a reprimand); In re Horowitz, 180 N.J. 520 (2004) (three-month suspension for attorney who practiced law while ineligible and failed to cooperate with disciplinary authorities during the investigation of the matter; the attorney also lacked diligence in the representation of the client and did not inform the client of the dismissal of the complaint; default matter); and In re Raines, 176 N.J. 424 (2003) (in a default case, three-month suspension for attorney who practiced law while ineligible and failed to cooperate with disciplinary authorities in the investigative stage of the matter; the attorney also lacked diligence in the client's case and failed to properly communicate with the client).

Here, in light of respondent's receipt of both the Pennsylvania Attorney Registrar's notice of his impending suspension, and, ultimately, the Supreme

Court of Pennsylvania's order of suspension, respondent had knowledge of his ineligible status.

The use of a misleading letterhead ordinarily results in an admonition. See, e.g., In the Matter of Raymond A. Oliver, DRB 09-368 (May 24, 2010) (attorney used letterhead that identified three attorneys as "of counsel," despite his having had no professional relationship with them, a violation of RPC 7.1(a) and RPC 7.5(a); attorney also violated RPC 8.4(d) since two of those attorneys were sitting judges, which easily could have created a perception that he had improper influence with the judiciary; we noted other improprieties); In the Matter of Paul L. Abramo, DRB 08-209 (October 20, 2008) (attorney continued to use firm letterhead that contained the name of an attorney no longer associated with the firm, a violation of RPC 7.5(c) and N.J. Advisory Committee on Professional Ethics Opinion 215, 94 N.J.L.J. 600 (1971); no prior discipline); and In the Matter of Carlos A. Rendo, DRB 08-040 (May 19, 2008) (attorney used letterhead that identified his partner as admitted to practice law in New York, rather than as admitted to practice law only in New York; a violation of RPC 7.1(a) and RPC 7.5(a); no prior discipline).

Here, respondent also is guilty of violating RPC 8.1(a). A reprimand is typically imposed for a misrepresentation to disciplinary authorities, so long as the lie is not compounded by the fabrication of documents to conceal the

misconduct. See, e.g., In re DeSeno, 205 N.J. 91 (2011) (attorney misrepresented to the district ethics committee the filing date of a complaint on the client's behalf; the attorney also failed to adequately communicate with the client and failed to cooperate with the investigation of the grievance; prior reprimand); In re Sunberg, 156 N.J. 396 (1998) (attorney lied to the OAE during an ethics investigation of the attorney's fabrication of an arbitration award to mislead his partner and failed to consult with a client before permitting two matters to be dismissed; no prior discipline); and In re Powell, 148 N.J. 393 (1997) (attorney misrepresented to the district ethics committee, during its investigation of the client's grievance, that his associate had filed a motion to reinstate an appeal; the attorney's misrepresentation was based on an assumption, rather than an actual conversation with the associate about the status of the matter; the attorney also was guilty of gross neglect, lack of diligence, and failure to communicate with the client; prior reprimand).

Generally, a misrepresentation to a client requires the imposition of a reprimand. See In re Kasdan, 115 N.J. 472, 488 (1989). A reprimand may still be imposed if the misrepresentation is accompanied by other, non-serious ethics infractions. See, e.g., In re Dwyer, 223 N.J. 240 (2015) (attorney made a misrepresentation by silence to his client, by failing to inform her, despite ample opportunity to do so, that her complaint had been dismissed, a violation

of RPC 8.4(c); the complaint was dismissed because the attorney had failed to serve interrogatory answers and ignored court orders compelling service of the answers, violations of RPC 1.1(a), RPC 1.3, and RPC 3.2; the attorney also violated RPC 1.4(b) by his complete failure to reply to his client's requests for information or to otherwise communicate with her from June 2009 through January 2011, and by his failure to communicate with her, except on occasion, between January 2011 and April 2014, when the client filed a grievance; the attorney never informed his client that a motion to compel had been filed, that the court had entered an order granting the motion, or that the court had dismissed her complaint for failure to serve the interrogatory answers and to comply with the court's order, violations of RPC 1.4(c)); In re Ruffolo, 220 N.J. 353 (2015) (attorney exhibited gross neglect and a lack of diligence by allowing his client's case to be dismissed, failing to work on it after filing the initial claim, and failing to take any steps to prevent its dismissal or ensure its reinstatement thereafter, violations of RPC 1.1(a) and RPC 1.3; the attorney also violated RPC 1.4(b) by failing to promptly reply to the client's requests for status updates; finally, his assurances that the client's matter was proceeding apace, knowing that the complaint had been dismissed, and that the client should expect a monetary award in the near future were false and violated RPC 8.4(c)); and In re Braverman, 220 N.J. 25 (2014) (attorney failed

to tell his client that the complaints filed on her behalf in two personal injury actions had been dismissed, thereby misleading her, by his silence, into believing that both cases remained pending, a violation of RPC 8.4(c); the attorney also violated RPC 1.1(a), RPC 1.3, RPC 1.4(b), RPC 3.2, and RPC 8.1(b); we found that the attorney's unblemished thirty-four years at the bar were outweighed by his inaction, which left the client with no legal recourse).

Based on the above disciplinary precedent, respondent's extensive practice of law while ineligible, misrepresentations to disciplinary authorities, and misrepresentations to clients would each, standing alone, warrant a reprimand. Considered together, however, along with his additional misconduct, a sanction of a censure or a three-month suspension is warranted.

In crafting the appropriate discipline to be imposed, we must consider relevant aggravating and mitigating factors. In aggravation, respondent defaulted in respect of the Pennsylvania disciplinary proceedings. It is well-settled that "[a] respondent's default or failure to cooperate with the investigative authorities acts as an aggravating factor, which is sufficient to permit a penalty that would otherwise be appropriate to be further enhanced." In re Kivler, 193 N.J. 332, 342 (2008).


The only mitigation we consider is respondent's lack of prior discipline. Given his more than thirty years at the bar, however, that mitigation is

compelling and, therefore, we find the aggravation and mitigation in this case to be in equipoise. Accordingly, we determine to impose a censure.

Member Zmirich voted to impose a three-month term of suspension. Member Gallipoli voted to impose a one-year term of suspension. Member Rivera 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 John Joseph Garagozzo
Docket No. DRB 18-330

Argued: November 15, 2018

Decided: March 25, 2019

Disposition: Censure

<i>Members</i>	Censure	One-Year Suspension	Three-Month Suspension	Recused	Did Not Participate
Frost	X				
Clark	X				
Boyer	X				
Gallipoli		X			
Hoberman	X				
Joseph	X				
Rivera					X
Singer	X				
Zmirich			X		
Total:	6	1	1	0	1


Ellen A. Brodsky
Chief Counsel