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SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 95-171

IN THE MATTER OF :
RICHARD J. RUBIN, :
AN ATTORNEY AT LAW :

Decision of the
Disciplinary Review Board

Argued: September 20, 1995

Decided: November 14, 1995

Teofilo Montanez appeared on behalf of the District I Ethics Committee.

Respondent did not appear.¹

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

This matter was before the Board based on a recommendation for discipline filed by the District I Ethics Committee (DEC). Respondent, Richard J. Rubin, is not a New Jersey attorney. He was charged in a six-count complaint with the following ethics violations: count one - RPC 3.3(a)(1) (making a false statement of material fact or law to a tribunal); count two - RPC 4.1(a)(1) (making a false statement of material fact or law to a third

¹ Notice of the Board hearing was made by publication in the New Jersey Law Journal and the New York Post.

person); count three - RPC 5.5(a) (practicing law in a jurisdiction when doing so violates the regulation of the legal profession in that jurisdiction); count four - RPC 8.1(a) (knowingly making a false statement of material fact in connection with a bar admission application); count five - RPC 8.1(b) (failing to respond to a lawful demand for information from a disciplinary authority); count six - RPC 8.4(c) (engaging in conduct involving dishonesty, fraud, deceit or misrepresentation) and RPC 8.4(d) (engaging in conduct prejudicial to the administration of justice). The charges stemmed from respondent's conduct in connection with a matter before the Office of Administrative Law (OAL), for which he sought admission pro hac vice in New Jersey.

Respondent was admitted to the New York bar in 1968. At the time of the conduct in question, respondent maintained an office in New York City. He was suspended from the practice of law in New York, on March 8, 1994, for wilful failure to cooperate with a committee investigation amid allegations of misconduct in five matters. When he continued to ignore the New York disciplinary system for six months, he was disbarred, as is the procedure in New York.

* * *

Respondent sought to represent a client, Robert Bruce Whittemore, in a matter before the OAL brought by the New Jersey Bureau of Securities. On or about August 8, 1991, respondent

applied for pro hac vice admission in New Jersey. In support of that application, respondent submitted an affidavit attesting to the fact that he had paid the fees required by R. 1:20-1(b) and R. 1:28-2 to the New Jersey Fund for Client Protection ("The Fund") and to the Ethics Financial Committee (currently the Disciplinary Oversight Committee). Exhibit G-5. The name of Steven R. Bolson was listed on the application as local New Jersey counsel.

The DEC hearing report indicates that respondent was admitted "as a member" of the New Jersey bar on August 13, 1991, by order of Administrative Law Judge Elinor R. Reiner. The order in the presenter's records, however, was not made a part of this record, inasmuch as it was unsigned. T26².

It is clear that Judge Reiner intended to admit respondent pro hac vice in the OAL proceeding to represent Whittemore. In a memorandum from Judge Reiner to Thomas Lowe, dated June 21, 1993 (Exhibit G-12), the judge stated that Director and Chief Administrative Law Judge Jaynee LaVecchia referred the matter to the Office of Attorney Ethics (OAE) for respondent's apparent failure "to comply with the procedural rules that allow admission pro hac vice." Judge Reiner further noted that Judge LaVecchia's referral letter was based on information that she, Judge Reiner, had provided. Indeed, respondent had been treated by the OAL as having been admitted to represent Whittemore and, in fact, performed certain legal services for Whittemore in the OAL matter. For example, respondent attended a prehearing conference and

² "T" denotes the transcript of the DEC hearing of January 25, 1995.

submitted several letters to the court. See Exhibit G-18 (letter dated November 21, 1991 to Judge Reiner with regard to discovery problems) and Exhibit G-19 (letter to the OAL, dated November 5, 1991, requesting an adjournment of a hearing scheduled for November 8, 1991 because of discovery problems).

In a letter dated April 28, 1992 to respondent, Judge Reiner referred to a telephone conference call on March 17, 1992, in which she learned that Steven Bolson was "apparently not local counsel" in the matter and thus directed respondent to provide her with the name of local counsel by April 3, 1992. See also Exhibit G-6 (letter from Steven R. Bolson, dated March 4, 1992, indicating that he was uncomfortable having his name used in connection with the matter). No name was received by that date. Also in that letter, Judge Reiner reminded respondent that, in a telephone call on April 22, 1992, he agreed to obtain local counsel by April 27, 1992, and confirmed that respondent could not act pro hac vice in the matter unless local counsel was obtained.

Finally, in her April 28, 1992 letter, Judge Reiner noted that the Fund and the Ethics Financial Committee had no record that respondent had paid the fees required by R. 1:20-1(b) and 1:28-2. Therefore, the judge requested proof, within one week of the letter, that respondent had made the payment as of August 8, 1992, the date of respondent's affidavit attesting to payment of the fees. Exhibit G-7. See also Exhibit G-16 (letter dated November 9, 1993 from the Fund to the investigator, indicating that there was no mention of respondent's name in the pro hac vice records).

By letter dated February 8, 1993 to Judge Reiner, respondent withdrew Whittemore's appeal because Whittemore had passed away.

Apparently, respondent never submitted the name of new local counsel to the judge and also failed to provide proof that he had paid the required fees to the Fund. The matter was, therefore, referred to the OAE by the Chief Administrative Law judge.

The matter was assigned to a DEC investigator by letter dated July 27, 1993 (Exhibit G-13). The investigator forwarded a copy of the grievance to respondent and requested his response thereto within two weeks from his receipt. The letter was returned to the investigator apparently because of an improper address on the envelope.

Thereafter, the investigator had a telephone conversation with respondent and obtained his current address. See Exhibit G-14. By certified letter to respondent dated August 25, 1993, the investigator confirmed their telephone conversation and the fact that a copy of her July 27, 1993 letter had been forwarded to the correct address. Nevertheless, the investigator did not receive a response. Id. She, therefore, enclosed another copy of the July letter and requested a written response within ten days. The investigator's letter also informed respondent that his failure to reply to the grievance was a violation of RPC 8.1(b) (mistakenly cited as RPC 1.8(b)).

During a telephone conversation with the investigator on September 20, 1993, respondent promised to reply to the grievance that week. See Exhibit G-15. When respondent did not submit an

answer, he was advised by certified letter from the investigator that, absent a response within ten days, the investigation would proceed without his input. Respondent paid no attention to that letter.

Thereafter, respondent continued in this pattern of non-cooperation. He did not reply to the DEC's complaint or to a later communication advising him that his failure to file an answer was a violation of RPC 8.1(b).

The panel chair in this matter was unable to locate respondent for purposes of scheduling a hearing. Notice of the DEC hearing scheduled for January 25, 1993 was, therefore, by necessity, published in the New York Law Journal on January 23, 1995. Exhibit COM-6. Certified letters dated December 15, 1994 were sent to respondent at two separate addresses. Nevertheless, respondent failed to appear at the DEC hearing.

* * *

The DEC summarily concluded that respondent's conduct was unethical and that he had violated RPC 3.3(a)(1); RPC 4.1(a)(1); RPC 5.5(a); RPC 8.1(a); RPC 8.1(b), RPC 8.4(c) and RPC 8.4(d).

* * *

Upon a de novo review of the record, the Board is satisfied that the conclusion of the DEC that respondent was guilty of

unethical conduct is fully supported by clear and convincing evidence.

Despite the absence of proof of a signed order admitting respondent pro hac vice to this jurisdiction for representation of Whittemore before the OAL, the Board finds a de facto or constructive admission pro hac vice of respondent.

Respondent's affidavit contained a false statement regarding his payment to the Fund. Judge Reiner's letter of April 28, 1992 (Exhibit G-7) states, "I am advised that the Clients [sic] Security Fund and Ethics Financial Committee has no record of your having paid the fees required by R. 1:20-1(b) and 1:28-2. Please provide proof of payment made prior to August 8, 1992" No such proof was provided to the court. Moreover, Exhibit G-16, a letter from the Director of the Fund states, "A review of our pro hac vice records reveals no mention of [respondent]. It appears that we were not aware that he was admitted pro hac vice." Based on these statements, it is clear that respondent made a false representation in his affidavit. Moreover, respondent's motion improperly named attorney Steven R. Bolson as local counsel when Bolson, in fact, was not involved in the Whittemore matter. Exhibit G-6.

The Board, therefore, finds violations of RPC 3.3(a)(1), RPC 5.5(a), RPC 8.1(a), RPC 8.4(c) and RPC 8.4(d). There is also clear and convincing evidence that respondent violated RPC 4.1(a)(1) since he conveyed the same false information to the other parties involved in the matter. T29-30.

Finally, respondent violated RPC 8.1(b), by failing to reply to the initial grievance, to answer the formal complaint, to appear at the DEC hearing and to appear at the Board hearing despite notice by publication in the New Jersey Law Journal and the New York Post. The Court suspended an out-of-state attorney's privilege to apply for permission to appear pro hac vice for a one-year period based upon ethics violations in this State. See In re Bailey, 57 N.J. 451(1971). Based on respondent's blatant indifference to the New Jersey disciplinary system as well as on his false statements in the affidavit, and because respondent is already disbarred in New York (equivalent to a seven-year suspension), the Board unanimously voted to impose a three-year suspension of respondent's privilege to apply for admission pro hac vice in New Jersey. The suspension is to run consecutive to respondent's reinstatement, if any, to the practice of law in New York.

The Board further directed respondent to reimburse the Disciplinary Oversight Committee for administrative costs.

Dated:

11/14/95



LEE M. HYMERLING
Chair
Disciplinary Review Board