

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 12-430
District Docket No. XIV-2012-0098E

IN THE MATTER OF
TONYA BUTLER
AN ATTORNEY AT LAW

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Decision

Argued: May 16, 2013

Decided: June 27, 2013

Missy Urban appeared on behalf of the Office of Attorney Ethics.

Respondent waived appearance for oral argument.

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, following respondent's sixty-day
suspension in Tennessee. The suspension was based on
respondent's admitted violations of the Tennessee Rules of
Professional Conduct, specifically, RPC 5.5(a) (a lawyer shall

not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction, or assist another in doing so); RPC 5.5(b) (a lawyer who is not admitted to practice in this jurisdiction shall not: (1) except as authorized by the Rules or other law, establish an office or other systematic and continuous presence in this jurisdiction for the practice of law; or (2) hold out to the public or otherwise represent that the lawyer is admitted to practice law in this jurisdiction); and RPC 8.4(a) (it is professional misconduct for a lawyer to: (a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another).¹

The OAE urged us to impose a reprimand. In an undated letter received by the Office of Board Counsel on January 17, 2013, respondent advised us that she agrees with the recommendation for a reprimand. We determine to impose a censure.

¹ The only Tennessee rule that varies to any extent from the New Jersey version is RPC 5.5(b), which has no counterpart here. The rule, however, seems to serve only to clarify prohibited conduct.

Respondent was admitted to the New Jersey bar in 2002. She has no history of discipline.

On March 24, 2008, respondent signed an "of-counsel" agreement with a Tennessee law firm, Wyatt, Tarrant, and Combs, LLP (the firm), and began work at the firm on April 1, 2008. Pursuant to the agreement, respondent was to become a member of the Tennessee bar.² Thereafter, respondent worked under the supervision of a Tennessee attorney, at the firm, for more than two years.

On August 23, 2010, the Tennessee Board of Professional Responsibility (TBPR) sent respondent a letter asking whether she was engaged in the unauthorized practice of law. She conceded that she engaged in conduct that constituted the practice of law, in that she had not been admitted to the Tennessee bar.

The TBPR's letter noted that respondent was listed as a member of the firm (it is unclear where she was listed), and that her name appeared in martindale.com as having been admitted

² Specifically, the agreement between respondent and the firm states, "the Firm shall: pay the dues for [respondent's] admission to the Tennessee State Bar."

to practice law in Tennessee in 2008. Respondent explained that, when she completed the Martindale-Hubbell form, in April 2008, along with other forms in connection with her employment at the firm, "she had every intention, understanding, and belief" that, when the print directory was issued with her listing, she would have submitted her comity application and become licensed in Tennessee. Respondent provided no explanation for her failure to submit her application to the bar.

The petition for discipline filed by the TBPR stated that respondent's "dishonest or selfish motive is an aggravating circumstance justifying an increase in the degree of discipline to be imposed." There is no explanation in the record for this reference.

On receiving the TBPR's letter, the firm, with respondent's concurrence, determined that she would perform no further work and that she would (1) cease all communication with the firm's clients, except to tell them that she could no longer assist them and to make referrals to other attorneys; (2) turn over all files and records to her supervising attorney; and (3) attempt to remove from public record any indication that she was

licensed in Tennessee and any indications of a connection between respondent and the firm.³

On August 16, 2011, respondent entered a conditional guilty plea to violating Tennessee RPC 5.5(a) and (b), as well as 8.4(a). As a result, on December 29, 2011, respondent was suspended for sixty days by the Supreme Court of Tennessee. The suspension was to take effect when respondent became licensed to practice in Tennessee.

The OAE considered this a case of an attorney practicing while ineligible and noted that the infraction is usually met with an admonition, if it is the sole violation and the attorney is unaware of his or her ineligible status, or if there are other non-serious infractions but the attorney advances compelling mitigating factors. The OAE cited In re Sharma, 193 N.J. 599 (2008).⁴ The OAE noted that a reprimand generally

³ Presumably, the firm had not known about respondent's misconduct, as evidenced by the steps it took when her actions came to light.

⁴ In Sharma, a three-month suspension was imposed. The attorney was guilty of lack of diligence and failure to communicate, as well as practicing law while ineligible and failure to maintain a bona fide office. There was no evidence that the attorney knew of his ineligibility. He had received a prior censure and a reprimand, both on a default basis.

results if the attorney is aware of the ineligibility and practices law nevertheless. The OAE cited In re Perrella, 179 N.J. 499 (2004), a motion for reciprocal discipline case that led to a reprimand.⁵ In the OAE's view, this case is similar to Perrella, where the attorney advised his client that he was on the inactive list and then practiced law. The attorney filed pleadings, engaged in discovery, appeared in court, and used letterhead indicating that he was a member in good standing of the Pennsylvania bar. It was the knowledge that he was ineligible that elevated the discipline to a reprimand.

The OAE also pointed to In re Kronegold, 164 N.J. 617 (2000), where the attorney was reprimanded for practicing while ineligible for failure to pay the annual assessment to the New Jersey Lawyers' Fund for Client Protection. An aggravating factor was the attorney's lack of candor to us about other attorneys' use of his name, on complaints and letters, and about the signing of his name in error.

The OAE deemed Kronegold similar to this case, in that both attorneys exhibited a lack of candor. As noted previously,

⁵ Perrella was on inactive status in Pennsylvania for failing to complete CLE requirements.

respondent's dishonest or selfish motive was considered an aggravating factor by the TBPR.

In mitigation, the Tennessee disciplinary authorities noted that respondent participated in community service, took responsibility for her actions, and concurred and cooperated with her firm's remedial actions. Nevertheless, in the OAE's view, respondent's knowledge of her "ineligibility" and the length of time she violated the disciplinary rules warrant a reprimand.

Upon review of the full record, we determine to grant the OAE's motion for reciprocal discipline.

Pursuant to R. 1:20-14(a)(5), another jurisdiction's finding of misconduct shall establish conclusively the facts on which it rests for purposes of a disciplinary proceeding in this state. We, therefore, adopt the findings of the Tennessee Court.

Reciprocal discipline proceedings in New Jersey are governed by Rule 1:20-14(a)(4), which provides that:

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;
- (E) the unethical conduct established warrants substantially different discipline.

A review of the record does not reveal any conditions that would fall within the ambit of subparagraphs (A) through (D). With respect to subparagraph (E), a review of New Jersey case law shows that, although attorneys guilty of misconduct similar to that of respondent usually have received reprimands, more serious discipline is appropriate here.

In general, reprimands are imposed on New Jersey attorneys who practice law in jurisdictions where they are not licensed. See, e.g., In re Bronson, 197 N.J. 17 (2008) (attorney practiced law in New York, a state in which he was not admitted, failed to prepare a writing setting forth the basis or rate of his fee in a criminal matter, and failed to disclose to a New York court that he was not licensed there; the unauthorized practice lasted for roughly one year and involved one client); In re Haberman,

170 N.J. 197 (2001) (on behalf of his New York/New Jersey law firm, attorney appeared in court in New Jersey in 1996, where he was not admitted, and did not advise the court that he was not admitted to practice in New Jersey; the attorney also appeared as counsel at a deposition in 1997, taken in connection with a Superior Court matter; the attorney's pro hac vice privileges in New Jersey also were suspended for one year); In re Benedetto, 167 N.J. 280 (2001) (attorney pleaded guilty to the unauthorized practice of law, a misdemeanor in South Carolina; the attorney had received several referrals of personal injury cases and had represented clients in five- to ten matters in the first half of 1997 in South Carolina, although he was not licensed in that jurisdiction; prior private reprimand for failure to maintain a bona fide office in New Jersey); In re Auerbacher, 156 N.J. 552 (1999) (although not licensed in Florida, attorney drafted a joint venture agreement between her brother and another individual in Florida and unilaterally designated herself as sole arbitrator in the event of a dispute; the attorney admitted to Florida disciplinary authorities that she had engaged in the unauthorized practice of law in that State); and In re Pamm, 118 N.J. 556 (1990) (attorney filed an answer and counterclaim in a divorce proceeding in Oklahoma, although she was not admitted to

practice in that jurisdiction; the attorney also grossly neglected the case and failed to protect her client's interest upon terminating the representation, which lasted for one year; in a separate matter, the attorney obtained a client's signature on a blank certification; in a third matter, the attorney engaged in an improper ex parte communication with a judge). But see In re Kingsley, 204 N.J. 315 (2011) (censure imposed based upon discipline in the State of Delaware for engaging in the unlawful practice of law by drafting estate planning documents for a public accountant's Delaware clients, many of whom he had never met, even though he was not licensed to practice law in Delaware; the attorney also assisted the public accountant in the unauthorized practice of law by preparing estate planning documents based solely on the accountant's notes and by failing to ensure that the compiled documents complied with the clients' wishes).

Although suspensions have been imposed in two cases, other serious infractions were also present. See, e.g., In re Lawrence, 170 N.J. 598 (2002) (in a default matter, the attorney received a three-month suspension for practicing in New York, where she was not admitted to the bar; the attorney also agreed to file a motion in New York to reduce her client's restitution

payments to the probation department, failed to keep the client reasonably informed about the status of the matter, exhibited a lack of diligence, charged an unreasonable fee, used misleading letterhead, and failed to cooperate with disciplinary authorities) and In re Davidoff, 156 N.J. 418 (1998) (two-year suspension for attorney who practiced law in New York where he was not admitted, negligently misappropriated clients' trust funds, made misrepresentations to his clients about the status of their litigation and about his status as a New York attorney, and failed to maintain a bona fide office and trust and business accounts in New Jersey).

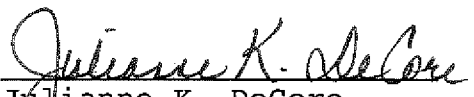
Presumably, all that was needed for respondent's comity application to the Tennessee bar was the filing of documents. The record provides no explanation for her misconduct, only that it stemmed from a "dishonest or selfish motive." She engaged in the unauthorized practice of law in Tennessee for nearly two and a half years, longer than the attorneys in the above cited cases who received reprimands. It is likely her misconduct would have continued, but for the actions of the TBPR.

We find that discipline more severe than a reprimand is warranted. The Tennessee Supreme Court deemed respondent's misconduct sufficiently serious to warrant a sixty-day

suspension, a measure of discipline not available to us. The briefest suspension available to us is three months. It would be incongruous to impose sterner discipline than that imposed by our sister jurisdiction, Tennessee. A censure would drive home for respondent the severity of her misconduct and respect the Tennessee court's decision. We determine to impose a censure.

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 Frost, Chair

By: 
Julianne K. DeCore
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

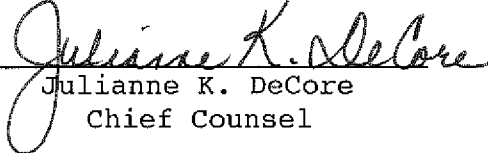
In the Matter of Tonya D. Butler
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Disposition: Censure

<i>Members</i>	Disbar	Suspension	Censure	Dismiss	Disqualified	Did not participate
Frost			X			
Baugh			X			
Clark			X			
Doremus			X			
Gallipoli			X			
Yamner			X			
Zmirich			X			
Total:			7			


Julianne K. DeCore
Chief Counsel