

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 13-066
District Docket No. XIV-2010-0338E

IN THE MATTER OF :
STEVEN CHARLES FEINSTEIN :
AN ATTORNEY AT LAW : Decision

Argued: September 19, 2013

Decided: October 25, 2013

Timothy J. McNamara appeared on behalf of the Office of Attorney Ethics.

Respondent appeared pro se.

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

This matter came before us on a recommendation for a two-year suspension, filed by the District IV Ethics Committee (DEC), for respondent's stipulated violations of RPC 3.3(a)(1) (knowingly making a false statement of material fact or law to a

tribunal), RPC 3.3(a)(5) (failing to disclose to the tribunal a material fact knowing that the omission is reasonably certain to mislead the tribunal), RPC 4.1(a)(1) (in representing a client, knowingly making a false statement of material fact or law to a third person), RPC 5.5(a)(1) (practicing law in a jurisdiction where doing so violates the regulation of the legal profession in that jurisdiction), 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 arose out of respondent's practicing law in New Jersey after his license was administratively revoked, on September 26, 2005, pursuant to R. 1:20-1(d). For more than seven consecutive years, respondent had been on the Supreme Court's list of ineligible attorneys due to nonpayment of the annual attorney assessment to the New Jersey Lawyers' Fund for Client Protection (CPF).

For the reasons set forth below, we determine to impose a one-year suspension on respondent; to bar him from seeking admission to practice pro hac vice; and to withhold, for one year, his readmission, if he seeks to be readmitted to the New Jersey bar.

Respondent was admitted to the New Jersey bar in 1991. At the relevant times, he practiced law with the Cherry Hill office of the Philadelphia law firm of Zenstein, Gallant & Parlow.

Respondent has no disciplinary history. However, from 1994 through 2005, he was on the ineligible list due to his failure to pay the annual assessment to the CPF.¹

Respondent and the Office of Attorney Ethics (OAE) entered into a stipulation. Although respondent told the OAE that he did not want a hearing for this disciplinary matter, a hearing took place, on August 15, 2012, because the DEC "was not satisfied with the Stipulation" and wanted to hear testimony from respondent.

According to the stipulation, respondent was placed on the Supreme Court's list of ineligible attorneys in 1994. He admitted that he did not pay the annual attorney assessment for the years 1995 through 2005. He testified that he did not make the payments because he worked for a non-New Jersey law firm

¹ Under R. 1:20-1(d) and R. 1:28-2(c), an attorney's failure to complete and file the annual registration statement for seven consecutive years shall result in the administrative revocation of his or her license to practice law in this State. Upon the Supreme Court's entry of the revocation order, "the attorney's membership in the Bar of this State shall cease." R. 1:28-2(c).

that did not require him to practice in New Jersey, and, therefore, he never anticipated practicing law in New Jersey when he left that firm.

As of September 26, 2005, respondent had been ineligible to practice law in New Jersey for twelve consecutive years, according to the stipulation. On that date, the Court administratively revoked his license to practice law.

As of August 15, 2012, the date of the hearing in this matter, respondent was not practicing law in any jurisdiction. He testified that, although he may eventually return to the practice of law in Pennsylvania, he doubts that he will seek reinstatement in New Jersey.²

From March 2007 through May 2010, respondent was employed by the Zenstein firm, where his practice was limited to representing homeowners in their claims against their homeowners' insurance companies. He performed legal work on approximately forty-eight New Jersey litigation matters.

² On May 4, 2012, the Disciplinary Board of the Supreme Court of Pennsylvania suspended respondent, by consent, for one year and one day.

In March 2007, respondent learned that the Zenstein firm wanted him to practice in New Jersey. He stipulated that, although he knew he had not paid the New Jersey attorney assessment "for several years," he did not know the exact status of his license. Nevertheless, he "assumed" he was suspended, but that, if he brought the arrears current, the suspension would be lifted.

Upon contacting the Supreme Court, respondent learned that his license had been administratively revoked in 2005. According to respondent, he had not received notification of the revocation of his license. He acknowledged that it was his responsibility to keep the Court abreast of his business address, which he had failed to do.

Respondent was instructed to file an affidavit and a petition to reinstate his license. Thereafter, he filed a petition for reinstatement, which was denied without explanation or opinion. Upon respondent's inquiry, the Court informed him that he could be readmitted if he took and passed the New Jersey bar exam.

In February 2008, respondent passed the bar exam. In addition, he completed the disclosure statement and, in candor, revealed financial problems that he had encountered from the

time that he ran his own office.³ As a result of those disclosures, his application was forwarded to the committee, which requested that he resolve some of these issues. Respondent was in the process of complying with the committee's requests when, as set forth below, the events of April 19, 2010 took place. As of April 2010, no decision had yet been made on his application.

The incident that led to the filing of the grievance against respondent occurred on April 19, 2010. On that date, respondent, as counsel for the plaintiffs, appeared before the Hon. Jean B. McMaster, J.S.C., to try the matter captioned Calvin Nelson and Jacqueline Pose v. State Farm Fire and Casualty Company, Superior Court of New Jersey, Law Division, Gloucester County, Docket No. L-427-07 (the Nelson matter). Prior to that date, and throughout the course of the litigation, respondent had corresponded with counsel for the defendant and with the court regarding pre-hearing discovery and scheduling

³ The disclosure statement assists the committee on character (committee) in determining the "fitness to practice law of each candidate for admission . . . on the basis of and by reviewing the personal record and reputation of each candidate and, following such review, to certify as to such fitness to the Supreme Court or withhold such certification." R. 1:25.

issues, appeared at the plaintiffs' depositions on their behalf, and, in all other respects, held himself out as a duly licensed New Jersey attorney.

Before the jury was brought in to start the trial, Judge McMaster's court clerk asked respondent for the spelling of his last name and whether he knew that he was not listed in the current Lawyers' Diary and Manual (Lawyers Diary). The court clerk gave the Lawyers Diary to respondent to see whether he could find his name.

Respondent replied that he did not understand why he could not find his name, indicating that there must have been a mistake. These statements were false, and respondent knew that they were false at the time he made them. After respondent made these statements to the clerk, defense counsel jokingly asked respondent whether he was sure that he was eligible to practice. Respondent replied that he was.

Respondent then revealed to Judge McMaster, in her chambers, that he was not licensed to practice law in New Jersey. Judge McMaster called defense counsel into her chambers and advised him of this fact. Respondent then disclosed that he also was the subject of an investigation for "minor financial matters" involving credit cards.

Respondent told Judge McMaster and defense counsel that he had taken and passed the bar exam in February 2008 and that his application for readmission was still pending with the committee. According to respondent, the committee's investigation concerned late credit card payments and a dispute with a credit card company that he had had years earlier.

Respondent asked Judge McMaster if she would admit him pro hac vice so that he could try the matter. The judge refused, stating that she would not assist him in his attempt to practice law without a license. Moreover, she told respondent that she was going to put a statement on the record explaining why the matter would not proceed that day. Respondent asked whether that could be done without his clients in the courtroom. Respondent believed that the judge stated that, because "it was an open courtroom," she could not exclude his clients. At the same time, the judge did not require that his clients be present. Thus, respondent told his clients that there was an issue with his license and that the case was going to be adjourned. His clients were not present when Judge McMaster placed a statement on the record.

At the disciplinary hearing, although respondent conceded that he did not "deserve mitigation," he explained that, as of

Fall 2009, he had two children in college, which was a financial drain on his family. Despite his denial that he had practiced law without a license for financial gain, he admitted that he had done so because he needed a job.

Respondent was treated for clinical depression from November 2010 through March 2012.

As of the date of the hearing, respondent was employed as an adjuster by a Pennsylvania public adjustment company.

Respondent stipulated to having violated the following RPCs: RPC 3.3(a)(1), RPC 3.3(a)(5), RPC 4.1(a)(1), RPC 5.5(a)(1), RPC 8.4(c), and RPC 8.4(d). The stipulation recited, as mitigating factors, respondent's ready admission of wrongdoing, his contrition and remorse, and his cooperation with the OAE.

As to discipline, the OAE asserts that "the appropriate baseline level of discipline is a three-month suspension, and that the appropriate level of discipline in this case is three months to a one-year suspension."

The DEC found that respondent had violated all of the stipulated RPCs. In assessing the appropriate measure of discipline, the DEC noted its concern with the "numerous violations," in particular, the number of matters (forty-eight)

that he had handled during his ineligibility, which "border[ed] on outrageous;" his "most egregious" attempt to try the Nelson matter without a license to practice law; and "[w]orse yet," his attempt to have Judge McMaster sanction his unethical conduct by admitting him pro hac vice in the Nelson matter.

Citing In re Marra, 183 N.J. 260 (2005), the DEC recommended a two-year suspension, commencing on August 15, 2012, the date of the disciplinary hearing.

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.

Respondent violated RPC 3.3(a)(1), insofar as he held himself out as a licensed New Jersey attorney by representing a party to litigation, submitting pleadings to the court as the attorney for that party, and, in particular, corresponding directly with the court regarding pre-hearing discovery and scheduling issues. At the same time, respondent violated RPC 3.3(a)(5) by failing to disclose to the court his ineligibility and the subsequent revocation of his license, knowing that the omission was certain to mislead the tribunal. Respondent violated RPC 4.1(a)(1) by knowingly making a false statement of material fact to the court clerk and to defense counsel about

his eligibility to practice law in New Jersey. Each of these infractions, in turn, constituted a violation of RPC 8.4(c).

Respondent clearly violated RPC 5.5(a)(1) by practicing law during his ineligibility and after his license was administratively revoked.

Finally, respondent violated RPC 8.4(d) by holding himself out to clients as a licensed attorney and by practicing law when he was ineligible and after his license was revoked. By doing so, he scoffed at the legal system and the Court, which is charged with supervising New Jersey attorneys.

Although the stipulation and the DEC relied on cases involving attorneys who practiced while ineligible, this case is much more serious because respondent practiced law while his license was revoked. In In re Torrellas, 213 N.J. 597 (2013), however, the attorney's license was administratively revoked in September 2007 for failure to pay the annual assessment. 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. Like respondent in this case, Torrellas had stipulated that, although he was not aware of having received a notice of revocation, he did not deny having received the notice.

We determined that, in the case of an attorney whose license is 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 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."

Based on Torrellas, the presumptive discipline for practicing law while on the revoked list is a three-month suspension. In this case, the stipulation demonstrates that respondent had knowledge of the revocation. Thus, the discipline must be enhanced to at least a six-month suspension. There are, however, serious aggravating factors that we must consider.

First, respondent handled forty-eight client matters after his license had been revoked. This is well beyond the three

appearances that Torrellas had made. Second, he knowingly made multiple misrepresentations about his eligibility to practice law to all parties involved in the administration of justice: his clients, his adversaries, the court, and courtroom personnel.

We, thus, determine that, if respondent applies for readmission to the New Jersey bar, his readmission should be withheld for a period of one year, with no appearance pro hac vice in New Jersey until further order of the Court.

Vice-Chair Baugh and Members Doremus and Gallipoli agreed with the majority's decision on the pro hac vice appearance, but voted to withhold respondent's readmission for two years.

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: Isabel Frank
Isabel Frank
Acting Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD


In the Matter of Steven C. Feinstein
Docket No. DRB 13-066

Argued: September 19, 2013

Decided: October 25, 2013

Disposition: One-year suspension

Members	Two-year Suspension	One-year Suspension	Reprimand	Dismiss	Disqualified	Did not participate
Frost		X				
Baugh	X					
Clark		X				
Doremus	X					
Gallipoli	X					
Yanner		X				
Zmirich		X				
Total:	3	4				


Isabel Frank
Acting Chief Counsel