SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 13-259
District Docket No. XIV-2012-0343E

IN THE MATTER OF

PETER ROY CELLINO

AN ATTORNEY AT LAW

Decision

Decided: January 31, 2014

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

This matter was before us on a certification of default filed by the Office of Attorney Ethics (OAE), pursuant to R. 1:20-4(f). A one-count complaint charged respondent with having engaged in the unauthorized practice of law (RPC 5.5(a)(1)). We determine to impose a censure.

Respondent was admitted to the New Jersey bar in 2005. On September 15, 2010, he received a censure, in a default matter, for gross neglect, failure to communicate with the client, misrepresentation to the client, and failure to cooperate with ethics authorities. In re Cellino, 203 N.J. 375 (2010).

Service of process was proper in this matter. On April 8, 2013, the OAE sent a copy of the complaint to respondent's home address, by both certified mail, return receipt requested, and by regular mail. Neither the certified mail receipt nor the regular mail envelope was returned to the OAE.

On May 24, 2013, the OAE sent respondent a "five-day letter," advising him that, unless he filed an answer to the complaint within five days of the date of the letter, the allegations of the complaint would be deemed admitted and that, pursuant to R. 1:20-4(f) and R. 1:20-6(c)(1), the record in the matter would be certified directly to us for the imposition of discipline. The letter was sent to respondent at the same home address, by both certified mail, return receipt requested, and regular mail.

The certified mail receipt was returned, having been signed, on June 24, 2013, by one Maria Brown. The regular mail was not returned.

As of July 25, 2013, the date of the certification of the record, no answer had been filed.

According to the complaint, prior to moving to Georgia, in 2008, respondent maintained offices for the practice of law in Hoboken.

Joseph E. Hawn retained David N. Marple to represent him in a divorce matter in Fulton County, Georgia. On March 6, 2012, respondent sent Marple an e-mail with an attachment that respondent referred to as a "notice of representation for Ashlee Wilson-Hawn in the matter of Hawn v. Hawn." Respondent attached to that email a March 5, 2012 letter to Marple, which stated as follows:

> As you may or may not be aware, Mrs. Hawn's previous attorney has withdrawn from the pending matter. Mrs. Hawn has been interviewing Attorneys to handle this matter on a permanent basis, but as of today has not completed the process. In the interim, Mrs. Hawn in an effort not to delay the proceedings has engaged my services.
>
> As of this morning, I have not received the case files from Mr. Lanier, but perhaps it would be prudent to schedule a time to speak at your convenience for a few minutes so that I can better understand where the matter is, and I can thus assist her permanent counsel with getting up to speed.
>
> I sincerely thank you for your understanding and prompt attention to this matter. All correspondence can be addressed directly to myself at the above captioned address.
>
> [C.Ex.3.] [1]

Respondent's letterhead identified him as "Peter R. Cellino, Esq." He signed the letter as "Peter R. Cellino, Esq."

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[1] "C" refers to the formal ethics complaint.

A few days later, on March 8, 2012, respondent left a voicemail message on Marple's office telephone, stating that he was "an attorney representing Ashlee Wilson-Hawn in the matter of Hawn v. Hawn." He requested that Marple return his call. Marple did not reply to respondent's e-mail or to his letter.

Respondent is not licensed to practice law in the State of Georgia, as confirmed by Marple's inquiry with the State Bar of Georgia, Unlicensed Practice of Law Division.

The formal ethics complaint charged that respondent's actions on behalf of Wilson-Hawn amounted to the unauthorized practice of law, a violation of RPC 5.5(a)(1).

The facts recited in the complaint support the charge of unethical conduct. Respondent's failure to file an answer is deemed an admission that the allegations of the complaint are true and that they provide a sufficient basis for the imposition of discipline. R. 1:20-4(f).

In March 2012, respondent took several actions to further his purported representation of Wilson-Hawn in a divorce action. On March 6, 2012, he sent Marple an e-mail and an attachment announcing his representation. The e-mail included a March 5, 2012 letter from respondent to Marple, stating that he represented Wilson-Hawn in the divorce proceedings. In the

letter, respondent requested that Marple contact him to discuss the case and to send all correspondence in the matter directly to him, until Wilson-Hawn selected a permanent attorney. Respondent used letterhead reading "Peter R. Cellino, Esq." and signed the letter as "Peter R. Cellino, Esq."

On March 8, 2012, respondent left a voicemail message for Marple, again stating that he represented Wilson-Hawn in the divorce matter and requesting a return call. Marple did not reply to respondent's e-mail or to his letter.

Marple's inquiry of the State Bar of Georgia, Unlicensed Practice of Law Division, revealed that respondent is not licensed to practice law in that State.

There is no doubt that respondent's actions constituted the practice of law. Not only did he identify himself as an attorney, but he also indicated to an adversary, in both a letter and a telephone message, that he had been retained by a particular client in a divorce case. He invited the adversary to contact him so that they could discuss the divorce matter. Because respondent is not licensed in the State of Georgia, his actions on behalf of Wilson-Hawn constituted the unauthorized practice of law, in violation of RPC 5.5(a)(1).

The discipline imposed on attorneys who practice law in jurisdictions where they are not licensed has varied widely, from an admonition to a suspension, depending on the presence of other ethics infractions, the attorney's disciplinary history, and aggravating and mitigating factors. See, e.g., In the Matter of Mateo J. Perez, DRB 13-009 (June 19, 2013) (admonition for attorney who, although not admitted in New York, represented a client there; the attorney had represented several other clients in New York after having been admitted pro hac vice or having disclosed to the judges that he had not been admitted in New York; he thus believed that he could represent clients without admission; the clients were family and friends of the attorney and were not charged for the representation; mitigating factors included the absence of prior discipline and the lack of personal financial gain); In the Matter of Duane T. Phillips, DRB 09-402 (February 26, 2010) (admonition for attorney who was not admitted in Nevada but represented a client who was obtaining a divorce in that state; we considered, in mitigation, that the conduct involved only one client, that the attorney had no ethics history, and that a recurrence of the conduct was unlikely); In the Matter of Sean T. Hogan, DRB 09-278 (December 2, 2009) (admonition for attorney admitted in New York and Connecticut, but not New Jersey,

who was employed as a paralegal by a New Jersey attorney, gave legal advice to a New Jersey client and distributed, in the lobby of a New Jersey law firm, business cards that did not disclose that he was not admitted in New Jersey; in mitigation, we considered the attorney's lack of a disciplinary history in both New York and Connecticut, the absence of harm to clients, and the attorney's immediate removal of the business cards upon receipt of the ethics grievance); In the Matter of Harold J. Pareti, DRB 09-028 (June 25, 2009) (admonition for attorney who, for almost two years, held himself out as licensed to practice law in New Jersey, maintained a law office in Toms River, entered into a partnership with a New Jersey attorney, and performed numerous real estate closings; his actions were based on his mistaken belief that he had passed the New Jersey bar examination, a belief that was reinforced by his receipt of a letter asking for information to complete the bar admission process; mitigation included the attorney's lack of intent to violate the RPCs and his unblemished thirty-six years as a member of the District of Columbia bar); In re Brown, ___ N.J. ___ (2013) (reprimand for attorney who engaged in the unauthorized practice of law, after agreeing to represent a client before the Court of Appeals for Veterans Claims (CAVC), a court before which he was not licensed

to practice, failed to advance the appeal, failed to keep the client informed about the status of his matter, and failed to notify him that he had terminated the representation); In re Bronson, 197 N.J. 17 (2008) (reprimand for attorney who 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) (reprimand for attorney who, on behalf of his New York/New Jersey law firm, 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) (reprimand for attorney who 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) (reprimand for attorney who, although not licensed in Florida, 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); In re Pamm, 118 N.J. 556 (1990) (reprimand for attorney who 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); In re Butler, 215 N.J. 302 (2013) (censure for attorney who, for more than two years, practiced with a law firm in Tennessee, although not admitted there; pursuant to an "of counsel" agreement, the attorney was to become a member of the Tennessee bar and the law firm was to pay the costs of her admission; the attorney

provided no explanation for her failure to follow through with the requirement that she gain admission to the Tennessee bar; the attorney was suspended for sixty days in Tennessee, where the disciplinary authorities determined that her misconduct stemmed from a "dishonest or selfish motive"); In re Kingsley, 204 N.J. 315 (2011) (attorney censured, based on 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, when 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 documents complied with the clients' wishes); and In re Lawrence, 170 N.J. 598 (2002) (in a default matter, 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).

Here, we considered that respondent's conduct was confined to a single matter. In addition, his representation of Wilson-Hawn never truly materialized because Marple refused to cooperate with him. Finally, from respondent's initial letter to Marple, it appears that his involvement was meant to be temporary, while Wilson-Hawn sought permanent counsel. With all of that in mind, were this respondent's only scrape with the discipline system, an admonition might suffice, as in Perez, Phillips, Hogan, and Pareti.

In aggravation, however, respondent has a prior censure, also in a default matter, albeit for unrelated conduct. We find that an admonition, thus, is insufficient to address respondent's violation of RPC 5.5(a). A reprimand is warranted. However, in a default matter, the appropriate discipline for the found ethics violations is enhanced to reflect the attorney's failure to cooperate with the disciplinary authorities as an aggravating factor. In re Kivler, 193 N.J. 332, 342 (2008). For that reason, the otherwise appropriate discipline — reprimand — must be enhanced to a censure.

Member Doremus 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: ______________________
Isabel Frank
Acting Chief Counsel

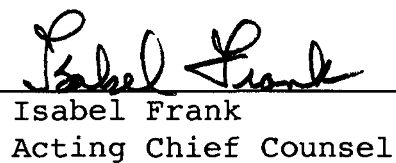
SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Peter R. Cellino
Docket No. DRB 13-259

Decided: January 31, 2014

Disposition: Censure

Members	Disbar	Suspension	Censure	Dismiss	Disqualified	Did not participate
Frost			X			
Baugh			X			
Clark			X			
Doremus						X
Gallipoli			X			
Hoberman			X			
Singer			X			
Yamner			X			
Zmirich			X			
Total:			8			1



Isabel Frank
Acting Chief Counsel