

SUPREME COURT OF NEW JERSEY  
Disciplinary Review Board  
Docket No. DRB 13-377  
District Docket Nos. XIV-2013-0347E  
and XIV-2013-0346E

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IN THE MATTER OF  
BARRY ALAN HOFFBERG  
AN ATTORNEY AT LAW

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Decision

Argued: February 20, 2014

Decided: June 5, 2014

Christina Blunda Kennedy 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 disciplinary stipulation between the Office of Attorney Ethics (OAE) and respondent, encompassing two separate matters. Respondent stipulated to having violated RPC 1.1(a) (gross neglect), RPC 1.4(b) (failure to keep a client reasonably informed about the status of the matter or to comply with reasonable requests for information), RPC 1.5(a) (unreasonable fee), RPC 1.16(d) (failure to protect a

client's interests upon termination of the representation), and RPC 5.5(a) (unauthorized practice of law, specifically, practicing law in New Jersey while ineligible and after his law license was administratively revoked).<sup>1</sup>

The OAE recommended that respondent be suspended for one or two years, if he seeks re-admission to the New Jersey bar, and that he be precluded from applying for pro hac vice admission in New Jersey for the period preceding his re-admission.

For the reasons expressed below we determine, in District Docket No. XIV-2013-0346E, that, if respondent applies for re-admission in New Jersey, his re-admission should be withheld for one year; that he not be permitted to apply for pro hac vice admission until further order of the Court; that he be required to pay the administrative costs in connection with this matter upon entry of the Court order, rather than when he seeks re-admission; and that he refund the fee to the client. In District Docket No. XIV-2013-0347E, we determine that respondent should be reprimanded for having practiced law while licensed in New

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<sup>1</sup> Under RPC 8.5(a), a lawyer not admitted in New Jersey is subject to the disciplinary authority of this jurisdiction, if the lawyer offers to provide or provides legal services in New Jersey. The disciplinary system, thus, has jurisdiction over respondent, although, at the time of some of his actions, he was not an attorney licensed in New Jersey.

Jersey, but ineligible to practice law for failure to pay the annual assessment to the New Jersey Lawyers' Fund for Client Protection (the Fund).

Respondent was admitted to the New Jersey and New York bars in 1993. He does not maintain a law office in New Jersey.

In 2005, respondent was reprimanded for practicing law while ineligible for failure to pay the annual attorney assessment to the Fund, grossly neglecting and lacking diligence in a real estate matter, failing to promptly deliver funds that a client or third person was entitled to receive, violating the recordkeeping rules, and negligently misappropriating trust funds. In re Hoffberg, 185 N.J. 131 (2005).

**Docket No. XIV-2013-0346E**

According to the disciplinary stipulation, although respondent is not currently licensed to practice law in New Jersey, he is licensed to practice law in New York. The Fund's report shows that his New Jersey license was revoked on September 26, 2011.<sup>2</sup>

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<sup>2</sup> An attorney who has been declared ineligible for a period of seven consecutive years "shall have his or her license to practice law in this State administratively revoked by Order of the Supreme Court." R. 1:28-2(c).

In October 2011, one month after his license was revoked, respondent met with Helen and Alvin Peralta, at which time he agreed to file a "Step Parent Petition for Adoption," in Bergen County, New Jersey. He charged the Peraltas a \$750 fee. On November 11, 2011, the Peraltas paid respondent \$400, at his Clifton office.

In February 2012, the OAE instructed respondent to take down his law firm website and to disconnect his law office telephone. He complied with the OAE's instructions.

On March 15, 2012, the Peraltas mailed the \$350 fee balance to respondent at a Hackensack, New Jersey, address that he had provided them. Thereafter, respondent failed to reply to any of the Peraltas' calls, placed to his cell phone in May and mid-June 2012. The Peraltas discovered that neither respondent nor his paralegal were at "the office address."

In late June, presumably 2012, Mr. Peralta called respondent, using a different phone number. When respondent answered the call, he informed Mr. Peralta that he was having a problem at his office and that his "paralegal had left his employ and left no files."

Respondent's last contact with the Peraltas was in late July 2012, when he informed them that "a representative of the court

told him he needed to make changes to the petition, but she was on vacation." The stipulation did not identify who the "she" was.

Respondent did not inform the Peraltas where he could be reached after he closed his law office, did not reply to any of their calls, did not refund their \$750 fee, and did not advise them to obtain a properly licensed New Jersey attorney.

At some point not mentioned in the stipulation, Helen Peralta contacted the Bergen County Clerk's Office. She was informed that, although respondent had not filed the petition with the court in January 2012, his paralegal had submitted a draft "for approval." Thereafter, the clerk's office emailed information to "respondent's office" about how to correct the deficiencies, but he never replied to the court's email and did not submit anything further to the court.

According to the stipulation, respondent also failed to reply to Helen Peralta's email requests for a refund of the fee.

Respondent stipulated that he grossly neglected the Peraltas' matter by not filing an adoption petition (RPC 1.1(a)); failed to keep his clients reasonably informed about the status of their matter and failed to comply with their reasonable requests for information (RPC 1.4(b)); charged an unreasonable fee, when he took the clients' fee to file the adoption petition, but failed to do so (RPC 1.5(a)); after accepting a fee,

abandoned his clients, failed to advise them to retain a New Jersey licensed attorney, and failed to refund their retainer (RPC 1.16(d)); and knowingly practiced law after his license was administratively revoked (RPC 5.5(a)).

Following a review of the stipulation, we are satisfied that it clearly and convincingly establishes that respondent's conduct was unethical.

In this matter, respondent met with the Peraltas after his license had been revoked, accepted a \$750 fee from them, and then did little or nothing on their behalf. His paralegal may have drafted a petition, but did not follow through with it. Respondent also failed to communicate with the Peraltas; failed to return their fee; failed to inform them that his license had been revoked and that, therefore, they should retain a licensed New Jersey attorney to represent them; and, in essence, abandoned them. Indeed, at one point, the Peraltas found out that neither respondent nor his paralegal were "at the office address."

The only violation that was not clearly and convincingly supported by the stipulated facts was that of RPC 1.5(a) (unreasonable fee). On this record, it cannot be said that \$750 was an excessive fee for the legal services that respondent was hired to perform. More properly, the acceptance of the fee was a dishonest act, a violation of RPC 8.4(c) (conduct involving

dishonesty, fraud, deceit or misrepresentation). Because, however, the stipulation is silent in this regard, a violation of that rule cannot be found. Unquestionably, however, respondent's failure to refund the unearned portion of the fee was a violation of RPC 1.16(d).

Withholding re-admission for a period of time is the sanction imposed when an attorney practices law on a revoked license. In In re Torrellas, 213 N.J. 597 (2013), a case of first impression, the attorney practiced law in New Jersey after his license had been revoked for failure to pay the Fund for seven consecutive years. Torrellas stipulated to having violated RPC 5.5(a).

Torrellas practiced primarily in New York and had no disciplinary record. He assumed that the New York law firm for which he worked was paying his annual attorney assessment. However, the assessment had not been paid for ten years. After Torrellas' license was revoked in 2010, he made two or three appearances in New Jersey cases by filing pleadings and appearing at oral argument and at a trial call in Ocean County. When the judge advised Torrellas that his license had been revoked, Torrellas transferred the case to another attorney from his firm, who was licensed to practice in New Jersey.

Torrellas stipulated that, because he practiced primarily in New York, he did not keep track of the notices from the Fund. He maintained that he did not recall receiving the revocation notice, but did not deny having received it.

The Court ordered that, if Torrellas applied for re-admission, his re-admission be withheld for six months. The Court also ordered that he be precluded from appearing pro hac vice in New Jersey until further order of the Court.

In another revocation case, In re Feinstein, 216 N.J. 339 (2013), the Court ruled that, if the attorney applied for re-admission, his re-admission was to be withheld for one year. He was also prohibited from appearing pro hac vice in New Jersey until further order of the Court.

In Feinstein, the attorney practiced law in the Cherry Hill office of a Philadelphia law firm that did not require him to practice law in New Jersey. Because Feinstein did not anticipate practicing law in New Jersey, he did not pay his annual assessment to the Fund. He was on the Supreme Court's list of ineligible attorneys from 1994 to 2005. His license was administratively revoked in September 2005.

At one point, Feinstein began practicing law in New Jersey. From 2007 to 2010, he worked on approximately forty-eight New Jersey litigation matters. Although he did not concede being



notified that his license had been revoked, he admitted believing that it was "probably suspended." When he called the Supreme Court to inquire about the status of his license, he was informed that it had been revoked. He was instructed to petition the Court to be reinstated. When his petition was denied, he was informed that he had to re-take the New Jersey bar, which he passed, in February 2008. He ran into some financial problems, however, which the Committee on Character wanted him to resolve before restoring his license.

On the eve of a trial that Feinstein was scheduled to handle, it came to light that there was an issue with his law license. Prior thereto, he had corresponded with his adversary and the court, appeared on behalf of clients at depositions, filed pleadings and, in all other respects, held himself out as a duly licensed New Jersey attorney. When his name could not be found in the New Jersey Lawyers' Diary, he indicated to the court clerk that the omission must have been a mistake. After making false statements about his status to his adversary, Feinstein revealed to the trial judge that he was not licensed to practice law in New Jersey, that he was "the subject of an investigation for 'minor financial matters' involving credit cards," and that his re-admission was still pending. The judge then refused his request to admit him pro hac vice. Altogether, Feinstein lied to

adversaries, to court personnel, and to the judge as well, by failing to reveal a material fact, that is, that his license had been revoked.

At the disciplinary hearing, Feinstein explained that, as of the fall of 2009, he had two children in college, a situation that caused a financial drain on his family. Although he denied that his motivation in practicing law without a license was financial gain, he admitted that he had done so because he needed a job.

Mitigating factors included Feinstein's ready admission of wrongdoing, contrition, and remorse.

Unquestionably, respondent's conduct was more serious than that of the attorney in Torrellas, who made two or three appearances in New Jersey and, later, took quick action to have the clients represented by another lawyer from his firm. The Court ordered that if, he applied for re-admission, his re-admission be withheld for six months. Torrellas did not lie to all parties involved in the administration of justice, as respondent did, and did not abandon his clients.

Respondent's conduct was more akin to that of Feinstein, who was ordered to have a one-year waiting period before his re-admission took effect. As indicated above, Feinstein performed legal work on forty-eight litigated matters, between 2007 and

2010. The work took place two to five years after the revocation of his license. He believed that his license was "probably suspended," but practiced law nevertheless. Moreover, even after he re-took the bar exam, which he passed, while his re-admission was pending approval he continued to practice law. He misled multiple parties, including a judge, about his good standing as a New Jersey attorney. And despite his denial that he had been motivated by personal gain, that was precisely his purpose. He acknowledged that he had two children in college, that his family was under financial pressure, and that he needed a job.

In this case, after respondent's license was revoked, he filed reply papers and appeared for oral argument in a Mercer County matter. Like Feinstein, he knew that his license had been revoked. It is true that Feinstein represented clients in forty-eight litigation matters, in contrast to respondent's representation of two clients. But, unlike Feinstein, respondent did nothing to advance the Peraltas' interests, did not reply to their requests for information about their case and, in essence, abandoned them.

Had respondent's conduct been confined to practicing on a revoked license, he might have been ordered to "sit out" for six months, after filing an application for re-admission, like

Torrellas. But he lied to multiple parties involved in the judicial process and abandoned his clients' interests.

The abandonment of a client is a very serious offense. See, e.g., In re Nwaka, 178 N.J. 483 (2004) (three-month suspension on a motion for reciprocal discipline; the attorney was disbarred in New York for abandoning one client and failing to cooperate with New York ethics authorities by not filing an answer to the complaint and not complying with their requests for information about the disciplinary matter; prior three-month suspension); In re Jennings, 147 N.J. 276 (1997) (three-month suspension for abandoning one client and failing to cooperate with ethics authorities; no disciplinary history); In re Bowman, 175 N.J. 108 (2003) (six-month suspension for abandoning two clients, making misrepresentations to disciplinary authorities and to a client, mishandling three client matters, and engaging in a pattern of neglect; prior private reprimand); and In re Misci, 206 N.J. 11 (2011) (one-year suspension in a default for an attorney who showed a callous indifference to the interests of his client; prior reprimand and three-month suspension).

In view of the foregoing, we determine that, if respondent applies for re-admission, his re-admission should be withheld for one year. We also determine that he be precluded from applying for pro hac vice admission until further order of the

Court; that he refund the \$750 to the Peraltas forthwith and provide proof to the OAE that he did so; and that he be required to reimburse the Disciplinary Oversight Committee for administrative costs and actual expenses incurred in the prosecution of this matter and the matter under District Docket no. XIV-2013-0347E (below), as provided in R. 1:20-17, upon the entry of the Court order, rather than upon re-admission. Finally, we direct the OAE to refer respondent's conduct to the New York disciplinary authorities.

**Docket No. XIV-2013-0347E**

From 2005 to 2011, respondent was ineligible to practice law in New Jersey for failure to pay his annual attorney assessment to the Fund. Respondent stipulated that he was aware of his ineligibility.

In 2011, while ineligible, but still licensed, respondent made fewer than ten appearances in New Jersey courts. He also filed a motion, on September 13, 2011, shortly before his license was revoked, but while he was ineligible to practice law. After his license was revoked, he appeared for oral argument on that motion.

Respondent stipulated that he violated RPC 5.5(a) for knowingly practicing law in New Jersey, while ineligible, and also after the revocation of his license.

Following a review of the stipulation, we are satisfied that it clearly and convincingly establishes that respondent's conduct was unethical.


Practicing law while ineligible typically results in a reprimand if the attorney is aware of the ineligibility or if the attorney has been previously disciplined for that same transgression, as here. See, e.g., In re Jay, 210 N.J. 214 (2012) (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) (attorney who practiced law while ineligible was aware of her ineligibility and had received an admonition for the same violation); and In re Austin, 198 N.J. 599 (2009) (during one-year period of ineligibility attorney made three court appearances on behalf of an attorney-friend who was not admitted in New Jersey, receiving a \$500 fee for each of the three matters; the attorney knew that he was ineligible; also, the attorney did not keep a trust and a business account in New Jersey and misrepresented, on his annual registration form, that

he did so; several mitigating factors considered, including the attorney's unblemished disciplinary record).

Because respondent was aware of his ineligible status and practiced law nevertheless, we determine that, like the attorneys in the above cases, he should receive a reprimand.

The requirement of the reimbursement of costs is addressed ante at page 13.

Disciplinary Review Board  
Bonnie C. Frost, Chair

By:   
Ellen A. Brodsky  
Chief Counsel

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SUPREME COURT OF NEW JERSEY  
DISCIPLINARY REVIEW BOARD  
VOTING RECORD

In the Matter of Barry A. Hoffberg  
Docket No. DRB 13-377

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Argued: February 20, 2014

Decided: June 5, 2014

Disposition: One-year suspension (XIV-2013-0346E) and Reprimand (XIV-2013-0347E)

<b>Members</b>	Disbar	One-year Suspension	Reprimand	Disqualified	Did not participate
Frost		X	X		
Baugh		X	X		
Clark		X	X		
Doremus		X	X		
Gallipoli		X	X		
Hoberman		X	X		
Singer		X	X		
Yamner		X	X		
Zmirich		X	X		
Total:		9	9		

  
Ellen A. Brodsky  
Chief Counsel