

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. 98-112

IN THE MATTER OF
JAMES J. McENROE,
AN ATTORNEY AT LAW

Decision

Argued: April 16, 1998

Decided: August 18, 1998

Richard J. Engelhardt appeared on behalf of the Office of Attorney Ethics.

Respondent's counsel, Roger C. Peterman, waived appearance before the Board.

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

This matter was before the Board on a Motion for Reciprocal Discipline filed by the Office of Attorney Ethics ("OAE"), pursuant to R. 1:20-14, following respondent's three-year suspension in the state of New York.

Respondent was admitted to the New Jersey and New York bars in 1977.

On January 7, 1992 the Appellate Division of the Supreme Court of New York, First

Judicial Department, found respondent guilty of professional misconduct in his representation of fourteen clients in various legal matters. The misconduct included neglect of clients' legal matters, failure to maintain contact with clients and failure to promptly refund unearned advance fees upon withdrawing from employment. In mitigation, respondent offered that he was debilitated by alcoholism during the period covered by the charge. Respondent made no attempt to refund the unearned fees until after disciplinary proceedings were commenced. However, in 1987 respondent voluntarily stopped practicing law.

By Order dated January 7, 1992, respondent was suspended from practice as an attorney in the State of New York for three years, retroactive to January 1, 1988, and until submission and approval of evidence demonstrating his continued rehabilitation. Respondent was reinstated in New York on March 5, 1992. See In re McEnroe, 181 A.D.2d 453, 581 N.Y.S.2d 718. Respondent failed to notify the OAE of his New York suspension.

The OAE urged the Board to suspend respondent from practicing law in the state of New Jersey for three years.

* * *

Upon a review of the full record, the Board determined 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 the Board rests for purposes of a disciplinary proceeding), the Board adopted the findings of the New York Supreme Court, Appellate Division.

Reciprocal disciplinary proceedings in New Jersey are governed by R.1:20-14(a), which directs that:

[t]he 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 upon 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; or
- (E) The misconduct 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 (E).

Similar misconduct in New Jersey normally results in a lengthy suspension from the practice. See In re Terner, 120 N.J. 706 (1990) (three-year suspension for engaging in a

pattern of neglect, failure to communicate and lack of diligence in representing sixteen separate clients over several years while addicted to cocaine); In re Terry, 137 N.J. 419 (1994) (three and a half-year suspension for abandoning three clients despite having been paid to complete their cases, failure to deliver funds to a third party and failure to cooperate with disciplinary authorities); In re Hurwitz, 135 N.J. 181 (1994) (three-year suspension for engaging in a pattern of neglect in five matters and failure to cooperate with disciplinary authorities); In re Foushee, 149 N.J. 399 (1997) (three-year suspension for engaging in gross neglect of client cases in four matters, failure to communicate with clients, failure to have written fee agreements, misrepresentation and failure to cooperate with disciplinary authorities).

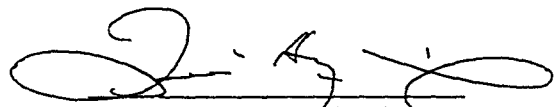
Respondent did not notify the OAE of his New York suspension, as required by R. 1:20-14(a)(1). The OAE learned of this matter from the First Judicial Department in early 1998. However, on April 14, 1998 respondent filed a certification stating that he did not practice law in New Jersey during the three-year period that he was suspended in New York. Although OAE counsel did not object to the Board crediting respondent for the three years he did not practice law in New York or New Jersey, he did request respondent's prospective suspension. The OAE asserted that respondent should be required to petition for reinstatement, as would have been required if he had complied with R. 1:20-14(a)(1) and informed the OAE of his New York suspension.

The Board unanimously determined to suspend respondent prospectively for a period

of one year. Prior to reinstatement, respondent must demonstrate proof of fitness to practice law. In addition, upon reinstatement, respondent must practice under the supervision of a proctor for two years. One member did not participate.

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

Dated: 8/18/98



LEE M. HYMERLING
Chair
Disciplinary Review Board