SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 13-107
District Docket No. IV-2011-0037E

IN THE MATTER OF	:	
	:	Decision
MICHAEL JOSEPH BROWN	:	
	:	
AN ATTORNEY AT LAW	:	
	:	

Argued: September 19, 2013

Decided: October 25, 2013

Myles Adam Seidenfrau appeared on behalf of the District IV Ethics Committee.

Andrew B. Kushner appeared on behalf of respondent.

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

This matter was before us on a stipulation, dated March 22, 2013, signed by the District IV Ethics Committee ("DEC"), respondent, and respondent's counsel. In the stipulation, respondent admitted that he violated RPC 1.3 (lack of diligence), RPC 1.4(b) (failure to communicate with a client), RPC 1.16(a), more properly, RPC 1.16(d) (failure to protect

client's interests upon termination of the representation), and RPC 5.5(a) (unauthorized practice of law).

The DEC recommended a reprimand or such lesser sanction as we deem warranted. Respondent urged that "an admonishment or private sanction" be imposed. For the reasons expressed below, we determine that a reprimand is the appropriate sanction for respondent's conduct.

Respondent was admitted to the New Jersey bar in 1990. He has no disciplinary history.

The facts have been drawn from the disciplinary stipulation and from respondent's brief and exhibits.

On February 8, 2010, Gary Cackowski retained respondent to represent him in an appeal from a decision of the Board of Veterans' Appeals, an entity within the Bureau of Veterans Affairs. On March 18, 2010, respondent filed a notice of appeal with the United States Court of Appeals for Veterans Claims (CAVC), which has exclusive jurisdiction to review final decisions of the Board of Veterans' Appeals. Respondent, however, was not admitted to practice before the CAVC. Although the CAVC accepted the appeal, it treated Cackowski as a pro se litigant.

According to respondent, he filed the appeal to preserve the statute of limitations and instructed Cackowski that it was

the client's responsibility to obtain a medical opinion to support his position in the appeal. Respondent admitted that he failed to oversee the case, after he filed the appeal, failed to communicate with Cackowski, after their initial February 8, 2010 meeting, and failed otherwise to follow up on Cackowski's case.

On June 16, 2010, the CAVC ordered Cackowski to file a brief, within sixty days. On August 26, 2010, the CAVC issued an order (1) staying the proceedings; (2) directing Cackowski to submit, within twenty days, both the brief and a motion to file it late; and (3) cautioning him that failure to comply with the court rules could result in the dismissal of the appeal and/or the imposition of sanctions. Because the CAVC considered Cackowski to be a pro se litigant, it did not send copies of these orders to respondent.

On October 25, 2010, Anne Stygles, the Chief Deputy Clerk of Operations of the CAVC's Public Office, left a voicemail message for respondent. She also spoke to his secretary, asking respondent to file a rule-compliant appearance in the case. Respondent did not recall receiving any contact from the CAVC. The CAVC then served respondent with a November 30, 2010 order, requiring that he file a notice of appearance that complied with the rules, within seven days of the date of the order. The letter provided that, if respondent failed to do so, the case

would proceed with Cackowski deemed to be self-represented. Although respondent did not remember receiving the November 30, 2010 order, a copy of it was in his file.

On January 5, 2011, the CAVC again sent an order to Cackowski, with a copy to respondent, directing him to file a brief, within sixty days. On March 11, 2011, the CAVC sent only to Cackowski an order to show cause why the case should not be dismissed. The copy of the order sent to Cackowski was returned to the CAVC. On May 13, 2011, the CAVC Court Clerk dismissed the appeal for failure to prosecute and to comply with the court rules.

Although respondent ceased representing Cackowski, he never notified his client that he had terminated the representation. The stipulation does not indicate when respondent ended the representation.

On March 14, 2011, respondent submitted an application for admission to the CAVC bar. On June 20, 2011, Gregory O. Block, the Clerk of the CAVC, referred the Cackowski matter to the Office of Attorney Ethics. On July 20, 2011, the CAVC issued an order, requiring respondent to show cause why his application for admission should not be denied until the resolution of the grievance against him. Thereafter, through counsel, respondent

withdrew his application, without prejudice, until the resolution of the grievance.

Respondent admitted that he violated RPC 1.3, RPC 1.4(b), RPC 1.16(a), and RPC 5.5(a). The stipulation lists, as mitigating factors, respondent's cooperation with disciplinary authorities, his ready admission of wrongdoing, the absence of a disciplinary history, and the fact that his conduct was not for personal gain.

Following a review of the record, we are satisfied that the stipulation provides ample basis to support violations of RPC 1.3, RPC 1.4(b), RPC 1.16(d)[1], and RPC 5.5(a). After agreeing to represent Cackowski, respondent failed to advance his appeal, failed to keep him informed about the status of his matter, and failed to notify him that he had terminated the representation. Moreover, because respondent had not been admitted to practice before the CAVC, he engaged in the unauthorized practice of law.

The discipline imposed on attorneys who practice law in jurisdictions where they are not licensed ranges from an admonition to a suspension, depending on the occurrence of other

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[1] Although the stipulation states that RPC 1.16(a) requires a lawyer to inform a client that the representation has terminated, RPC 1.16(d) is the applicable subsection of the rule. Respondent was on notice of the allegation, in the formal ethics complaint, that he had failed to inform his client that he had terminated the representation. Indeed, he stipulated that he had not done so. Therefore, no due process problems arise from a finding of a violation of RPC 1.16(d).

ethics infractions, the attorney's disciplinary history, and the presence of 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; 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; the attorney, 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 and 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 imposed on attorney admitted in New York and Connecticut, but not in New Jersey, who, while employed as a paralegal by a New Jersey attorney, gave legal advice to a New Jersey client and distributed business cards, in the lobby of a New Jersey law firm, 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 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) (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 received a reprimand; in addition, his pro hac vice privileges in New Jersey were suspended for one year); In re Benedetto, 167 N.J. 280 (2001) (reprimand imposed on 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 imposed; 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); 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 imposed; for more than two years, attorney 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, the attorney received a three-month suspension for practicing law in New York, where she was not admitted; 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).

As previously noted, respondent contended that he should receive an admonition or private discipline.[2] He cited admonition cases, in which attorneys practiced law when they were not aware of their ineligibility. First, he conceded that he was aware that he was not admitted to practice before the CAVC. Second, practicing while ineligible for failure to pay the annual attorney assessment is less serious than practicing in a jurisdiction where the attorney has not been admitted. In the former, the attorney has met all of the requirements for practicing in a jurisdiction, but has failed to comply with a

[2] In 1994, private reprimands as a form of discipline were eliminated and replaced by admonitions, which are public. R. 1:20-9(d)(3) provides that there shall be no private discipline.

monetary obligation. In the latter, the attorney has not demonstrated competence or fitness to practice in a specific jurisdiction or before a particular tribunal.

There remains the question of the appropriate degree of discipline for respondent's ethics transgressions.

The cases in which attorneys have been admonished for practicing in a jurisdiction in which they have not been admitted are distinguished from this matter. In all four of those cases, the attorneys were not charged with any violations, other than RPC 5.5(a). Moreover, the attorneys in both Perez and Pareti believed, albeit mistakenly, that their conduct was permissible. Perez understood, based on his own experience and the custom of the courts in which he appeared, that he was permitted to represent clients in New York, although not admitted there, while Pareti believed that he had been admitted to the New Jersey bar. In contrast, here, respondent was aware, when he submitted the notice of appeal on Cackowski's behalf, that he was not authorized to practice before the CAVC. He so admitted.

In addition, respondent was guilty of violating RPC 1.3, RPC 1.4(b), and RPC 1.16(d). Typically, attorneys with no disciplinary history who violate RPC 1.3, RPC 1.4(b), and RPC 1.16(d) receive admonitions. See e.g., In the Matter of William

E. Wackowski, DRB 09-212 (November 25, 2009) (attorney permitted a complaint to be administratively dismissed, failed to inform his client of the dismissal, and failed to turn over the file to the client upon termination of the representation); In re Cameron, 196 N.J. 396 (2007) (attorney twice permitted a personal injury matter to be dismissed, failed to disclose the dismissals to the client, failed to return the client's telephone calls, and failed to turn the file over to successor counsel; in addition to RPC 1.3, RPC 1.4(b), and RPC 1.16(d), the attorney was deemed to have engaged in gross neglect, a violation of RPC 1.1(a)); In the Matter of Vera Carpenter, DRB 97-303 (October 27, 1997) (in a personal injury matter, attorney failed to act diligently to advance the client's claim, failed to return the client's telephone calls, and failed to turn over the client's file to new counsel); and In the Matter of Richard J. Carroll, DRB 95-017 (June 26, 1995) (attorney lacked diligence in handling a personal injury action, failed to properly communicate with the client, and failed to comply with the new lawyer's numerous requests for the return of the file; the attorney also failed to reply to the grievance).

Although respondent advanced mitigating factors — he cooperated with disciplinary authorities by readily admitting his wrongdoing, he has no ethics history, and his conduct was not

motivated by personal gain – in our view, the mitigation is not sufficient to warrant an admonition. On balance, we determine that a reprimand is the appropriate sanction for respondent's ethics infractions.

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 Michael J. Brown
Docket No. DRB 13-107

Argued: September 19, 2013

Decided: October 25, 2013

Disposition: Reprimand

Members	Disbar	Suspension	Reprimand	Disqualified	Did not participate
Frost			X		
Baugh			X		
Clark			X		
Doremus			X		
Gallipoli			X		
Yamner			X		
Zmirich			X		
Total:			7		

Isabel Frank
Acting Chief Counsel