

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 07-071
District Docket No. XIV-07-001E

IN THE MATTER OF
STEPHEN BRETT
AN ATTORNEY AT LAW

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Decision

Argued: May 10, 2007

Decided: July 18, 2007

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

Respondent did not appear, despite proper service.

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

This matter came before us on a motion for reciprocal discipline filed by the Office of Attorney Ethics ("OAE"), pursuant to R. 1:20-14(a). The motion was based on respondent's indefinite suspension in Maine and reciprocal one-year suspension in Massachusetts for violating rules comparable to New Jersey RPC 1.3

(lack of diligence), RPC 1.4 (b) (failure to communicate with a client), RPC 3.1 (pursuing a frivolous claim), RPC 4.2 (communicating with a person represented by counsel), RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation), and RPC 8.4(d) (conduct prejudicial to the administration of justice). Respondent also engaged in the unauthorized practice of law (RPC 5.5), displayed gross neglect (RPC 1.1(a)), and knowingly made a false statement of material fact in connection with a disciplinary matter (RPC 8.1(a)), although these RPCs are not specifically cited in the OAE's motion.¹ The OAE recommends a one-year suspension. We agree with that recommendation.

Respondent was admitted to the New Jersey bar in 2000, the Maine bar in 2001, and the Massachusetts bar in 2003. Although he has no history of discipline in New Jersey, on January 25, 2006, the Maine Grievance Commission imposed three separate reprimands on him for eavesdropping on an opposing party and on a judge during the mediation of a case, offering a fee to a police officer for the officer's solicitation of clients at the time of the arrest, and, during a criminal trial, allowing his

¹ In Maine, respondent violated "Maine Bar rules 3.1(A) (conduct unworthy of an attorney); 3.2(f)(1) (conduct subverting any provision of the Maine Bar rules); 3.2(f)(3) (conduct involving dishonesty, fraud, deceit or misrepresentation); 3.2(f)(4) (conduct prejudicial to the administration of justice; 3.6(a)(3) (neglect of a client's matter); and 3.6(f) (communicating with adverse party)."

client to submit false testimony without rectifying the fraud on the tribunal.

Respondent has been on the Supreme Court's list of ineligible attorneys since September 30, 2002, for failure to pay the annual assessment to the New Jersey Lawyers' Fund for Client Protection.

On December 5, 2006, the Supreme Judicial Court for Suffolk County, Commonwealth of Massachusetts, suspended respondent for one year. That discipline was based on a June 20, 2006 order of the Maine Supreme Judicial Court, suspending him from the practice of law until further order.

The Massachusetts Supreme Judicial Court's decision summarized the facts that led to respondent's disciplinary proceedings:

The conduct giving rise to respondent's suspension in Maine includes:

- (a) assisting a client to violate the condition of his release in a criminal case by providing the client access to the victim;²
- (b) requesting and receiving money from a client he was appointed to represent;
- (c) failing to appear and notify a client (or have his client transported to court) for arraignment, resulting in a forfeiture of the bail posted by the client's parents;

² Part of Exhibit B to the OAE's brief is an unsigned report from the Cumberland County Sheriff's Office, stating that respondent violated a court order and assisted his client in committing a bail violation by providing his own vehicle to his client, where his client waited until respondent returned with the victim.

- (d) misrepresenting to the Maine Board of Bar Overseers that the court in (c) above failed to give him notice of the arraignment; . . .
- (e) persistently attempting to initiate a romantic relationship with, and against the wishes of, a woman who had been the complainant in a criminal matter against a client of the respondent, after the matter had been concluded;
- (f) communicating with an opposing party without the consent of counsel for the party;
- (g) pursuing a frivolous appeal resulting in the assessment of treble costs and attorney's fees of \$1,000 against his clients; and
- (h) holding himself out as a lawyer while suspended from the practice of law.³

[OAEbEx.E1-Ex.E2.]

In calculating the proper quantum of discipline for respondent, the Massachusetts court considered his prior three public reprimands, as well as mitigation. As to the latter, respondent claimed that he lacked the financial resources to treat a condition, attention deficit/hyperactivity disorder, from which he suffers. He presented evidence that the disorder caused him to act impulsively and impaired his judgment relating

³ The Maine Court order (Exhibit B to the OAE's brief) contains stipulated facts adopted by that court. The order states that "on June 12th [2006] Mr. Brett still acted and spoke in such a manner as to cause a recent former client, and/or his power of attorney, to believe Mr. Brett was still serving as his lawyer or was at least providing some informal legal assistance concerning an appellate matter." At that time, respondent was temporarily suspended from the practice of law (effective May 26, 2006).

to the charged misconduct. According to the Massachusetts court, "[t]here is evidence that [respondent] has been receiving treatment for this disorder, with success." In the Massachusetts proceeding, respondent argued that the discipline to be imposed in that state should be comparable to what he would have received for the same conduct there, because the indefinite suspension imposed in Maine was a more severe form of discipline in Massachusetts than in Maine. In Maine, an attorney may petition for reinstatement from an indefinite suspension at any time. In Massachusetts, an attorney may not petition for reinstatement until the expiration of at least five years.

As noted above, Massachusetts suspended respondent for one year. It conditioned his reinstatement on passing the Multi-State Professional Responsibility exam and being reinstated in Maine.

Respondent did not notify the OAE of the suspensions imposed by either state.

Following a review of the record, we determine 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 disciplinary proceedings. We, therefore, adopt the findings of the Maine Supreme Judicial Court, Board of Overseers of the Bar.

Specifically, respondent's failure to appear at his client's arraignment, failure to have his client transported to the court, and failure to notify him of the arraignment date constituted violations of RPC 1.1(a), RPC 1.3, and RPC 1.4(b). Respondent's inaction created serious consequences for his client's parents and possibly for his client.⁴ Thereafter, respondent misrepresented to the Maine Board of Bar Overseers that the court had not given him notice of the arraignment. Such misrepresentation was a violation of RPC 8.4(c) and RPC 8.1(a).

Respondent further violated RPC 8.4(c), as well as RPC 8.4(d), when he assisted his client to obtain access to the victim, and requested and accepted money from a client whom he was appointed to represent.

Respondent's unethical conduct did not stop there. He communicated with an opposing party without first obtaining the consent from the party's counsel, pursued a frivolous appeal, and led a former client and his attorney-in-fact to believe that he was an attorney in good standing, when, in fact, he was under a temporary suspension. The above conduct violated RPC 4.2, RPC 3.1, and RPC 5.5(a), respectively.

⁴ The court subsequently returned the bail funds to the parents and vacated the default. The record does not disclose the measures needed to obtain such relief.

Respondent was also charged with persistently attempting to initiate a romantic relationship with, and against the wishes of a woman who had been the complainant in a criminal matter against respondent's client, after the matter had been concluded. In Maine, this conduct violated M Bar Rule 3.1(a) (conduct unworthy of an attorney). New Jersey has no equivalent ethics rule. For lack of more details about respondent's conduct in this respect, we are unable to find a violation of a specific New Jersey RPC, particularly because respondent's actions took place after his client's case had been concluded.

Reciprocal disciplinary proceedings in New Jersey are governed by R. 1:20-14(a)(4), which provides:

The 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 on 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 unethical conduct established warrants substantially different discipline.

A review of the record does not reveal any conditions that would fall within the scope of subparagraphs (A) through (E). For respondent's numerous ethics infractions, considered with aggravating factors (his three prior reprimands and his failure to inform the OAE of the actions taken in Maine and Massachusetts) and the single mitigating factor advanced (attention deficit/hyperactivity disorder), a significant period of suspension is warranted.

The level of discipline for practicing while suspended generally ranges from a lengthy suspension to disbarment, depending on a number of factors, including the presence of other misconduct and the attorney's disciplinary history. See, e.g., In re Bowman, 187 N.J. 84 (2006) (one-year suspension for practicing law while suspended; the attorney maintained a law office where he met with clients; he also acted as solicitor for two planning boards; in addition, he failed to file the appropriate affidavit of compliance with R. 1:20-20, as required of all suspended attorneys; prior three-month suspension; compelling mitigating circumstances justified the one-year suspension); In re Marra, 170 N.J. 411 (2002) (one-year suspension for acting as an attorney in two matters, despite being suspended; the attorney also violated the recordkeeping rules; prior private reprimand, public reprimand, and three-month suspension); In re Lisa, 158 N.J. 5 (1999) (attorney

suspended for one year for appearing before a New York court while suspended in New Jersey; in imposing a one-year suspension, the Court considered that a serious childhood incident had made the attorney anxious about offending other people or refusing their requests; out of fear of offending a close friend, the attorney agreed to assist as "second chair" in the friend's New York criminal proceeding; no venality or personal gain was involved); In re Wheeler, 140 N.J. 321 (1995) (two-year suspension for attorney who practiced law during his period of suspension; other improprieties included his multiple misrepresentations to clients, gross neglect, pattern of neglect, negligent misappropriation, conflict of interest, and failure to cooperate with disciplinary authorities); In re Marra, 183 N.J. 260 (2005) (three-year suspension for attorney who, in three matters, practiced law while suspended; the attorney had a prior one-year suspension for the same conduct); In re Cubberley, 178 N.J. 101 (2003) (attorney suspended for three years for soliciting and accepting fees from a client after his suspension; the attorney also misrepresented to the client that his disciplinary problems would be resolved within one month, failed to notify the client and the courts of his suspension, failed to file the affidavit of compliance required by R. 1:20-20, and failed to cooperate with disciplinary authorities); In re Wheeler, 163 N.J. 64 (2000) (three-year suspension for

attorney who handled three matters with knowledge that he was suspended and failed to file the affidavit required of all suspended attorneys; the attorney did not charge for the representation; prior two-year suspension for practicing while suspended); In re Dupré, 183 N.J. 2 (2005) (five-year suspension imposed for practicing law while temporarily suspended, gross neglect, lack of diligence, failure to communicate with the client, misrepresentation about the status of the client's matter, failure to have a written fee agreement, failure to protect client's interests on termination of the representation, and failure to cooperate with disciplinary authorities; the attorney also failed to appear on the return date of the Court's order to show cause; prior three-month suspension); In re Brown, 186 N.J. 160 (2006) (disbarment for attorney who pleaded guilty to an information charging him with three counts of false statements to a federal agency or department; the attorney, a former special assistant United States attorney, represented the United States for several years while his license was suspended and, while employed by the Department of the Army, signed certifications falsely stating that he was an attorney in good standing in New Jersey; prior six-month and three-year suspensions); and In re Costanzo, 128 N.J. 108 (1992) (attorney who, while suspended, signed collection letters addressed to a client was disbarred; in addition, the attorney

mishandled numerous matters by exhibiting lack of diligence, gross neglect, pattern of neglect, failure to communicate with clients, and failure to set forth in writing the basis or rate for his fee; the attorney also failed to notify several clients of his suspension; prior private and public reprimands).

Although practicing law during a period of suspension is always viewed with the utmost seriousness, respondent's conduct in this regard was not as alarming as that of the above attorneys, including those who ended up on the low end of the suspension spectrum -- Bowman, Marra, and Lisa. Bowman continued to maintain a law office, met with clients, and represented two planning boards. He also failed to file the affidavit required by R. 1:20-20. Marra acted as an attorney in two matters and also violated the recordkeeping rules. Lisa made a court appearance, thereby misleading the judge that he was an attorney in good standing.

Here, the extent of respondent's conduct is not so apparent. All the record tells us is that he "acted and spoke in such a manner as to cause a recent former client, and/or his power of attorney, to believe Mr. Brett was still serving as his lawyer or was at least providing some informal legal assistance concerning an appellate matter." Without more details, we are unable to assess the proportion and duration of respondent's actions. It is clear, though, that he held himself out as an

attorney while suspended, as found by the Maine and Massachusetts disciplinary authorities.

Respondent's other misdeeds, viewed in isolation, would ordinarily be met with either an admonition or a reprimand, with one possible exception, the violation of RPC 4.2. See, e.g., In re Muckelroy, 118 N.J. 451 (1990) (reprimand for attempting to collect a fee from an indigent client); In the Matter of Alan Wasserman, DRB 94-228 (October 5, 1994) (admonition for attorney who filed a frivolous lawsuit for the recovery of legal fees; after the suit was dismissed, the attorney filed another frivolous action against the former clients' insurance company to recover the same fees); In re Silverman, 179 N.J. 364 (2004) (reprimand for filing a frivolous suit against his client to recover legal fees that the client did not owe; aggravating factors considered); In the Matter of Ben Zander, DRB 04-133 (May 24, 2004) (admonition for attorney whose inaction caused a trademark application to be deemed abandoned on two occasions; the attorney also failed to comply with the client's requests for information about the case; violations of RPC 1.1(a), RPC 1.3, and RPC 1.4(a)); In re Powell, 148 N.J. 393 (1997) (reprimand imposed on attorney who misrepresented to the DEC that an appeal had been filed and who displayed gross neglect, lack of diligence, and failure to communicate with his client); and In re Alcantara, 144 N.J. 257 (1995) (reprimand for attorney who

communicated with his client's co-defendants, who were represented by counsel; the co-defendants had agreed to testify against the attorney's client; the attorney also attempted to persuade the co-defendants to refrain from testifying for the State; the Court held that, "but for the fact that this is our first interpretation and application of RPC 4.2," the discipline would be greater than a reprimand; "we caution members of the bar, however, that the Court in the future will ordinarily suspend an attorney for the type of violation of RPC 4.2 that occurred in this case;" id. at 268); and In re Milita, 180 N.J. 116 (2004) (three-month suspension for attorney who contacted his client's co-defendant, who was represented by counsel; the attorney then transmitted the co-defendant's statement to the prosecutor; respondent's conduct also prejudiced the administration of justice in that it caused the adversary to file a motion to remove the attorney as counsel, to sever the trial, and to exclude the co-defendant's statement from the trial; the attorney had a prior six-month suspension and a reprimand; one of the improprieties that resulted in the six-month suspension was the attorney's use of deceit in communicating with an adverse witness).

Although research uncovered no cases on assisting a client to have access to the victim, other cases involving a violation of a court order (RPC 8.4(d)) suggest that respondent's conduct

on this score, too, might result in the imposition of a reprimand. See, e.g., In re Holland, 164 N.J. 246 (2000) (reprimand for attorney who, although required to hold in trust a fee in which she and another attorney had an interest, violated a court order by taking the fee prior to the resolution of the dispute); In re Milstead, 162 N.J. 96 (1999) (reprimand for violation of a court order by disbursing escrow funds to the client); and In re Hartmann, 142 N.J. 587 (1995) (reprimand for intentionally and repeatedly ignoring court orders to pay opposing counsel a fee, resulting in a warrant for the attorney's arrest; the attorney also displayed discourteous and abusive conduct toward a judge, with intent to intimidate her).

As the OAE properly noted, and as the above cases establish, each of respondent's ethics offenses alone would not warrant a one-year suspension. In the aggregate, however, his violations of RPC 1.1(a), RPC 1.3, RPC 1.4(b), RPC 3.1, RPC 4.2, RPC 5.5(a), RPC 8.1(a), RPC 8.4(c), and RPC 8.4(d), together with his prior three reprimands and the aggravating factor of failing to notify the OAE of his Maine and Massachusetts suspensions, fully support giving full reciprocity to the Massachusetts determination, that is, a one-year suspension. The suspension should be prospective. This degree of discipline is appropriate even when respondent's mental health problems are

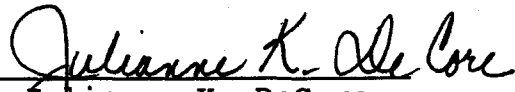
factored into the fashioning of the suitable sanction for his overall conduct.

In addition, respondent is to submit proof of fitness to practice prior to applying for reinstatement in New Jersey, which should be conditioned on reinstatement in Maine. We agree with the OAE that respondent's "home jurisdiction is in the best position to ascertain whether he has rehabilitated himself to the extent necessary to be readmitted to practice."

Member Baugh 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
William J. O'Shaughnessy, Chair

By: 
Julianne K. DeCore
Chief Counsel

**SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD**


In the Matter of Stephen M. Brett
Docket No. DRB 07-071

Argued: May 10, 2007

Decided: July 17, 2007

Disposition: One-year suspension

Members	Disbar	One-year Suspension	Reprimand	Dismiss	Disqualified	Did not participate
O'Shaughnessy		X				
Pashman		X				
Baugh						X
Boylan		X				
Frost		X				
Lolla		X				
Neuwirth		X				
Stanton		X				
Wissinger		X				
Total:		8				1


Julianne K. DeCore
Chief Counsel