SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 08-121
District Docket No. X-2005-0049E

IN THE MATTER OF	
LARRY BRONSON	
AN ATTORNEY AT LAW	

Decision

Argued: July 17, 2008

Decided: September 3, 2008

James M. McCreedy appeared on behalf of the District X Ethics Committee.

Ricardo Solano, Jr. appeared on behalf of respondent.

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

This matter came before us on a recommendation for an admonition filed by the District X Ethics Committee ("DEC"), which we determined to bring on for oral argument. We voted to reprimand respondent.

The complaint charged respondent with violating RPC 1.1 (gross neglect and pattern of neglect), RPC 1.4 [presumably (b)] (failure to keep a client informed about the status of a matter), RPC 1.5 [presumably (b)] (failure to set forth in writing the basis or rate of the fee), RPC 1.5 [presumably (e)] (division of fee with an attorney not in the same firm), RPC 1.6 (failure to preserve confidential client information), RPC 1.15 (failure to promptly return unearned fees and other property to a client), more properly a violation of RPC 1.16(d), RPC 3.3 (lack of candor to a tribunal), RPC 3.4 (fairness to opposing party and counsel), RPC 5.1 (failure to supervise a lawyer), RPC 5.5(a) (unauthorized practice of law), R. 1:20-3(3) and (4) [presumably R. 1:20-3(g)], more properly RPC 8.1(b) (failure to cooperate with disciplinary authorities), and RPC 8.4(a) (violation or attempt to violate the Rules of Professional Conduct).

Respondent was admitted to the New Jersey bar in 1970. He was temporarily suspended on January 22, 2008, after pleading guilty, in the United States District Court for the Eastern District of New York, to an information charging him with the illegal structuring of monetary transactions. In re Bronson, 193 N.J. 349 (2008). According to a report of the New Jersey

Lawyers' Fund for Client Protection, respondent has been ineligible to practice law since September 25, 2006.

This matter arose out of the following conduct:

From March 2003 until April 2004, respondent, or his law firm, represented grievant Emilio Noble in a criminal matter, in New York. Although respondent is admitted in federal court in New York, he is not licensed to practice law in the state courts in New York. After respondent obtained bail for Noble, he assigned the case to a New York lawyer, Robert Koppelman. The nature of the professional association between respondent and Koppelman was contested at the ethics hearing. Because almost all of the factual issues were disputed, we set out Noble's and respondent's accounts separately.

Noble's Version of Events

In March 2003, Noble was incarcerated in Bronx, New York, on charges of grand larceny and falsifying business records. On Sunday, March 16, 2003, his wife, Grisel Noble, met with respondent, at his Manhattan office, to discuss his representation of Noble. Respondent did not inform Grisel that he was not admitted in New York. Louis Guzman, Grisel's brother-in-law and a retired New York City police officer, accompanied Grisel to

respondent's office and confirmed that respondent had not informed them that he was not admitted in New York. Grisel paid respondent $5,700 to obtain bail for Noble. Grisel believed that she had retained respondent individually, not just his law firm, to represent Noble.

Because no staff was present in the office at that Sunday meeting to prepare documents, respondent handwrote a receipt on a piece of office stationery. He drew a line through his name on the stationery and inserted the name of the law firm "Bronson & Bronson."

The next day, March 19, 2003, respondent appeared, in Bronx Supreme Court, for a bail hearing on Noble's behalf. This occasion was the first time that Noble had met respondent. Noble, too, claimed that respondent had never informed him that he was not admitted in New York.

After respondent secured Noble's release from incarceration, he assigned the case to Robert Koppelman, an attorney admitted in New York. As previously mentioned, the relationship between respondent and Koppelman was not clear. Although Koppelman did not testify at the ethics hearing, the parties offered a February 16, 2007 letter in which they "agreed to stipulate to what Robert

Koppelman Esq.'s testimony would be if he were called as a witness in this matter." The stipulation provided:

> Mr. Koppelman viewed himself as an independent contractor for Mr. Bronson. Mr. Koppelman knew that Mr. Bronson was not admitted in New York State Court and Mr. Koppelman would sometimes assist Mr. Bronson in New York State criminal matters. He recalls that they had an agreement whereby Mr. Koppelman received a weekly salary, in addition, if the firm's gross or net revenue (he could not recall which) exceeded a certain amount, he would receive a percentage of that revenue.
>
> Mr. Koppelman definitely did not view himself as a partner of Mr. Bronson. He does not think the name "Bronson and Koppelman" was ever used for purposes of particular proceedings and does not recall any letterhead bearing the name "Bronson and Koppelman."
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> [S¶4-S¶5.][1]

Respondent led Noble to believe that he would be handling Noble's matter, never informing him that Koppelman would be the primary attorney responsible for his case. Noble never received any writing from either respondent or Koppelman, indicating that Koppelman would be representing him. The court docket sheet indicated that, after Noble was released on bail, Noble appeared in court fourteen times, mostly for adjournments. On each occasion, Koppelman, not respondent, appeared on Noble's behalf.

[1] S refers to the February 16, 2007 stipulation about Koppelman's testimony.

At these court proceedings, Noble had asked Koppelman whether respondent would be appearing in court. Instead of answering his questions, Koppelman arranged a meeting among Noble, Koppelman, and respondent, in which respondent assured Noble that he was still Noble's attorney and indicated that Koppelman would be assisting with the trial.

In April 2004, Koppelman appeared with Noble for the trial. On April 27, 2004, the third day of jury selection, Noble entered a guilty plea, was sentenced to probation, and was ordered to pay restitution. Noble did not know, in advance, that respondent would not be representing him at trial. He entered a guilty plea on Koppelman's advice, allegedly under duress. Koppelman, however, had not clearly explained the plea agreement and its consequences.

The day after entering the guilty plea, Noble retained another attorney, in an effort to retract that plea. His motion to vacate the plea was denied. His appeal of the order denying his motion was not successful. As of the date of the ethics hearing, Noble was pursuing an appeal of that matter at the federal level.

During his cross-examination at the DEC hearing, Noble acknowledged that he had admitted to the judge, under oath, that he was voluntarily pleading guilty to one count of grand larceny,

that he understood the charges, and that he was satisfied with the representation he had received. He further conceded that, although he was facing incarceration of up to fifteen years, he had received a light sentence, that is, he had been placed on probation for five years.

Despite Noble's numerous requests, during the representation, for a retainer agreement setting forth the amount of respondent's hourly fee and describing the services to be provided, respondent failed to prepare a written fee agreement. Respondent never sent Noble a bill, or an accounting of the number of hours spent on his case.

In addition to the retainer of $5,700, Noble paid respondent $15,000 for representation through the trial. On September 17, 2003, Noble gave respondent $5,000 toward the $15,000 legal fee. The receipt was prepared on Bronson & Bronson letterhead. On February 11, 2004, Noble gave respondent the balance of $10,000. This receipt was prepared on Bronson & Koppelman letterhead. Although about one month after Noble's release on bail, he gave respondent an additional $7,000 in cash, he did not obtain a receipt and could not produce documentation to support that payment.

Because Noble's guilty plea eliminated the need for a trial, he believed that respondent should have returned the $15,000 fee that he had paid for representation through a trial.

Noble filed a civil action against respondent and Koppelman seeking $15,045 for the legal fees plus expenses. On January 25, 2005, Noble obtained a judgment against respondent for $10,000 plus costs. Of that sum, Noble collected about $2,000, which the sheriff obtained by levying on respondent's bank account. During the civil litigation, respondent acknowledged to Noble that Koppelman had not represented Noble properly.

As part of a settlement agreement with Koppelman, Noble eventually received his file through him. At the civil proceeding, Koppelman indicated that respondent had never paid him for representing Noble.

During the civil litigation, Koppelman disclosed the grand larceny and falsification of documents charges that had been filed against Noble. This disclosure is the basis for the charge, in the ethics complaint, that Koppelman revealed confidential information, in breach of the attorney-client privilege, and that respondent failed to supervise Koppelman.

Noble had difficulty locating respondent to serve him with the civil complaint. When Noble retained respondent, in March

2003, respondent's office was in Manhattan. By January 2004, respondent had relocated to another office in Manhattan. Noble testified that he located respondent in Brooklyn, through the Freedom of Information Act.

In addition to the civil suit against respondent, Noble filed an ethics grievance with the New York disciplinary authorities. By letter dated November 16, 2004, the Grievance Committee for the Second and Eleventh Judicial Districts declined jurisdiction because respondent is not licensed to practice law in New York. The grievance committee suggested that Noble file a grievance in New Jersey. Noble learned that respondent was not admitted in New York when he received the letter from the grievance committee.

According to Noble, respondent failed to keep him informed about the status of the litigation. Most of their conversations centered on respondent's questions to Noble about when he was going to pay his legal fees. Noble also complained that respondent failed to return his telephone calls, primarily when he tried to contact respondent to obtain a refund of his legal fees, after the representation had concluded. Further, he never received any correspondence from respondent. Moreover,

respondent refused to return his file, which Noble needed to pursue his criminal appeal.

The complaint alleged that respondent failed to cooperate with the DEC investigator. The investigation was protracted because of the civil action against respondent, which was proceeding simultaneously. On November 19, 2004, immediately after receiving notice that the New York disciplinary authorities had no jurisdiction over respondent, Noble filed the grievance with the Office of Attorney Ethics. On December 1, 2004, that office advised Noble to file a grievance with the DEC. Noble did so on December 4, 2004.

During the investigation, on April 18, 2005, respondent informed the DEC that Noble had obtained a default judgment against him, that service had not been proper, and that the civil proceeding was not yet concluded. On April 20, 2005, respondent obtained an order to show cause why the judgment should not be vacated. A hearing was then scheduled for June 23, 2005. On June 22, 2005, the grievance was dismissed without prejudice, based on the pending civil litigation.

On June 23, 2005, Noble reported to the DEC that respondent had failed to appear at the hearing on his motion to vacate the judgment, that the judge had denied the motion to vacate, and that

respondent had again relocated his office. Noble complained that respondent was manipulating the system to delay the inevitable.

On July 5, 2005, the grievance was again docketed. On July 8 and July 29, 2005, the DEC investigator sent letters to an address in Florham Park, New Jersey, asking respondent to reply to the grievance. On August 9, 2005, respondent replied that he had obtained an August 5, 2005 order for Noble to show cause why the execution of the judgment should not be stayed. The return date of the order was scheduled for August 24, 2005.

Thereafter, on September 28, 2005, respondent was indicted and incarcerated in federal court, in New York.[2] He was released by order dated October 27, 2005. He, thus, neither received nor replied to the October 14, 2005 letter from the investigator seeking information about the grievance.

In his written summation to the DEC, the presenter argued that respondent violated the following RPCs:

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[2] As previously mentioned, respondent pled guilty to a charge of illegally structuring monetary transactions, for which he was temporarily suspended on January 22, 2008.

- RPC 1.1 and RPC 1.4 by failing to inform Noble that he was not admitted in New York and to keep Noble informed about the status of the matter.

- RPC 1.5(b) by failing to set forth in writing the basis of his fee.

- RPC 1.5(e) by dividing fees with Koppelman, an attorney who was not in respondent's firm.

- RPC 1.6(a) and RPC 5.1(b) by permitting Koppelman to reveal privileged information during the civil litigation.

- RPC 1.15 (no subsection specified) for failing to safeguard property.

- RPC 3.3 by failing to disclose to the court that he was not licensed to practice law in New York.

- RPC 3.4(c), in conjunction with RPC 3.3, for allowing Koppelman to represent Noble while Noble believed that respondent was his lawyer.

- RPC 5.5(a) for practicing law while not licensed in New York.

- RPC 8.4(a) for violating numerous RPCs.

- R. 1:20-3(g)(3) and (4) [more properly, RPC 8.1(b)] for failing to cooperate with the ethics investigation.

- RPC 1.2 (failure to abide by the client's decisions concerning the scope of the representation), RPC 1.3 (lack of diligence), RPC 1.5(a) (unreasonable fee), RPC 1.15 (presumably (d), failure to keep records of client's funds) and RPC 4.1 (false statement of a material fact to a third person).[3]

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[3] These violations were not charged in the complaint.

Respondent's Version of Events

After Grisel Noble contacted respondent by telephone, in March 2003, respondent arranged for Koppelman to visit Noble. Respondent also arranged to meet with Grisel on a Sunday, in advance of a Monday bail hearing. At the meeting with Grisel, he informed her that, after Noble's release, he would decide whether to accept the representation and that they would discuss the fee arrangement at that time. Respondent insisted that Grisel had retained the law firm, not him individually, to represent Noble, pointing out that, on the March 16, 2003 receipt, he had stricken through his name and inserted the words "Bronson & Bronson."[4]

Although respondent never sent Noble a letter informing him that he was not admitted in New York, he claimed that his letterhead clearly indicated that he was not a member of the New York State bar.

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[4] Respondent had previously practiced law with his brother, Jeffrey Bronson, who was admitted in New York. As of March 2003, however, Jeffrey Bronson was no longer part of the law firm. At that time, although Koppelman was an employee, his name did not appear on the letterhead.

Respondent often was admitted to practice pro hac vice in New York courts. In this case, however, he had informally obtained the judge's permission to appear at Noble's bail hearing. The March 19, 2003 hearing transcript contains no reference to the judge's permission for respondent to appear. Although respondent agreed to provide the DEC with a copy of another transcript, in which he allegedly had informed the court that he was not admitted in New York, he later claimed that he was not able to obtain it.

After Noble was released on bail, respondent met with him and Koppelman. He informed Noble that the legal fee for representation was $15,000 for pretrial services and that Koppelman would be handling the case. Respondent never appeared in court on Noble's behalf, after the bail hearing. Koppelman made every subsequent court appearance, which numbered seventeen or eighteen. Noble was kept informed of the status of his matter at these court appearances. The stipulation in lieu of Koppelman's testimony provided that

> Mr. Koppelman was not aware of Mr. Noble having any thoughts that someone other than he, Mr. Koppelman, would represent Mr. Noble at trial. Mr. Koppelman does not remember Mr. Noble ever telling him that he expected Mr. Bronson to handle the trial.
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> [S¶8.]

Because Noble's co-defendant had immediately pled guilty and had indicated that he would testify against Noble, the district attorney believed that he had a strong case. At the beginning of the case, respondent advised Noble to enter into a plea agreement providing for no incarceration and allowing him to make restitution over a period of years. About one week before the scheduled trial date, respondent and Koppelman again advised Noble to plead guilty. Noble refused to do so until after jury selection had begun.

In January 2003, two months before the Noble bail hearing, respondent hired Koppelman as an employee, presumably as an associate. Noble's case was the first criminal matter that Koppelman handled for respondent. Contrary to Koppelman's denial, respondent testified that, at some point, Koppelman became a partner. A receipt, dated February 11, 2004, given to Noble for payment of legal fees, was prepared on letterhead bearing the name "Bronson & Koppelman."

Although Koppelman was the primary attorney in Noble's case, respondent discussed the case with Noble many times. He agreed with Noble's testimony that many of their conversations were about payment of his fee, adding that Noble had constantly delayed paying his bill. Because he had charged a flat fee, he had not

provided Noble with an accounting of the time spent on his case and was not required to return any portion of the fee, based on the fact that no trial had taken place. Noble could not have afforded respondent's fee if he had been charged on an hourly basis. The fee would have been the same amount, whether a trial had lasted one day or three months.

Respondent denied that Koppelman had not been paid for representing Noble. At that time, Koppelman received a salary plus a percentage of fees.

Respondent participated in meetings with Noble and Koppelman, during which they discussed evidentiary issues. The stipulation about Koppelman's testimony confirms that respondent was present at these meetings. In addition, respondent counseled Noble about the plea agreement.

As to the existence of a retainer agreement, respondent claimed that, under the rules governing criminal practice in New York, a formal written retainer agreement was not required. He stated that, although he had prepared a retainer letter, he could not produce a copy of it. The letter provided that his fee would be a flat $15,000 for services through pretrial motions and that an additional fee would be required for services for trial preparation and trial.

Noble had visited respondent's office when respondent was not there, demanding his file. A paralegal provided Noble with his complete file, without making a copy of it. In turn, Noble testified that the file contained neither a retainer agreement nor any letterhead from respondent.

Respondent denied having told Noble that Koppelman had not represented him properly. He offered Noble "a few bucks" if Noble was unhappy with Koppelman's representation. He denied that Noble had asked for a refund of a portion of his legal fees.

As previously mentioned, respondent was arrested, on September 28, 2005, and was incarcerated until October 28, 2005. After his release, he was not permitted to retrieve the records from his Manhattan or Brooklyn offices. The week before the ethics hearing, he was permitted access to his Brooklyn office, at which time he discovered that his office was vacant.

As to his cooperation with the DEC, respondent explained that (1) the first investigator had difficulty serving him with the grievance; (2) that investigator agreed to adjourn the grievance until the civil matter was resolved; (3) respondent did not have his file because Noble had retrieved it before he was sentenced, in July 2004; (4) and, from September 27, 2005 to October 28,

2005, respondent was incarcerated and could not reply to the grievance.

At the conclusion of the ethics hearing, the DEC found that respondent failed to prepare a written fee agreement and failed to maintain records. The hearing panel report did not specify which records respondent failed to maintain.

Notwithstanding the New York disciplinary authorities' declination of jurisdiction over Noble's grievance, the DEC suggested that the charges that respondent engaged in the unauthorized practice of law and failed to disclose material facts to a tribunal should be referred to the appropriate authority in New York.

The DEC found insufficient evidence that respondent (1) misrepresented to the court that he was admitted in New York; (2) failed to supervise Koppelman; (3) acted willfully so as to sustain a finding of a violation of RPC 8.4(a); (4) allowed Koppelman to represent Noble while Noble believed that respondent was his lawyer; and (5) failed to cooperate with disciplinary authorities.

In addition, the DEC rejected the charge that respondent allowed Koppelman to reveal confidential information, reasoning that Noble had waived the attorney-client privilege by bringing

a civil action against his lawyers. As to the relationship between respondent and Koppelman, the DEC found that the nature of the affiliation between them "is unclear and is disputed."

The hearing panel report did not address the failure to communicate and gross neglect charges.

The DEC recommended an admonition, citing respondent's previous unblemished record of more than thirty years.

Following a de novo review of the record, we are satisfied that the DEC's conclusion that respondent's conduct was unethical is fully supported by clear and convincing evidence. We are unable to agree, however, with all of the DEC's findings, as seen below.

The record establishes that respondent improperly practiced law in New York. By meeting with a client, discussing the case, and giving advice, respondent engaged in the practice of law in New York, a jurisdiction in which he was not licensed. Respondent admitted that he explained the plea agreement to Noble, met with Koppelman to discuss the case, and participated in meetings with Noble and Koppelman.

Apparently, respondent (and the DEC) believed that the term "practice of law" requires that there be a court appearance. It does not. In In re Jackman, 165 N.J. 580, 586 (2000), the Court

determined that an attorney who was not admitted in New Jersey practiced law in this state, despite the fact that he was not engaged in litigation:

> As an associate at Sills Cummis, Jackman clearly was practicing law in New Jersey. He acknowledged this at the hearing and conceded the same before this Court. The fact that he may not have appeared in court, but worked on transactional matters, does not affect that conclusion. The practice of law in New Jersey is not limited to litigation. *State v. Rogers*, 308 N.J. Super. 59, 67-70, 705 A.2d 397 (App.Div.), *certif. denied*, 156 N.J. 385, 718 A.2d 1214 (1998). One is engaged in the practice of law whenever legal knowledge, training, skill, and ability are required. *Id.* at 66, 705 A.2d 397.

Here, respondent applied his legal knowledge, training, skill, and ability when he advised Noble about the plea agreement, met with Noble and Koppelman, and discussed the case with Koppelman. Moreover, respondent did appear in court when he represented Noble at the bail hearing. Respondent claimed that the judge had granted him permission to appear at that proceeding. The transcript of the bail hearing was introduced into evidence at the ethics hearing. It contains neither respondent's disclosure that he was not admitted to practice in New York nor permission by the court for him to appear. Respondent failed to produce the transcript in which he

allegedly had received the court's permission to appear on Noble's behalf. We find, thus, that respondent engaged in the unauthorized practice of law, a violation of RPC 5.5(a).

Respondent was also charged with violating RPC 3.3 and RPC 3.4 by misleading a tribunal and by allowing Koppelman to represent Noble in court, when respondent was the attorney whom Noble had retained. Essentially, the misconduct alleged is that respondent failed to inform the court in New York that he was not licensed to practice in that state. As mentioned above, respondent did not produce the transcript in which he allegedly informed the judge that he was not admitted in New York. Because respondent failed to sustain his defense, we find that he violated RPC 3.3(a)(5) (failure to disclose to the tribunal a material fact knowing that the omission is reasonably certain to mislead the tribunal). We dismiss as inapplicable the charge that respondent violated RPC 3.4 (fairness to opposing party and counsel).

The DEC determined that respondent had failed to prepare a written fee agreement. Noble asserted that, although he had repeatedly asked respondent for a retainer agreement, he had never received one. Respondent, in turn, claimed that, although he had prepared a retainer letter, a member of his staff had given Noble his file without making a copy of it. He further

maintained that the rules did not require him to prepare a written retainer agreement.

Contrary to respondent's testimony, the rules in New York require either a letter of engagement or a written fee agreement:

> §1215.1 Requirements
>
> (a) Effective March 4, 2002, an attorney who undertakes to represent a client and enters into an arrangement for, charges or collects any fee from a client shall provide to the client a written letter of engagement *before commencing* the representation, or within a reasonable time thereafter . . .
>
> Where there is a significant change in the scope of services or the fee to be charged, an updated letter of engagement shall be provided to the client.
>
> (b) The letter of engagement shall address the following matters:
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> (1) explanation of the scope of the legal services to be provided;
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> (2) explanation of attorney's fees to be charged, expenses and billing practices; and
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> (3) where applicable, shall provide that the client may have a right to arbitrate fee disputes under Part 137 of this Title.
>
> (c) Instead of providing the client with a written letter of engagement, an attorney may comply with the provisions of subdivision (a) of this section by entering into a signed written retainer agreement with the client, before or within a reasonable time after commencing the representation, provided that the agreement addresses the matters set forth in subdivision (b) of this section.
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> [22 NYCRR §1215.1.]

There are exceptions to the letter of engagement or written retainer rule; however, none are applicable here.[5] Although respondent should not have practiced law in New York, a jurisdiction in which he was not admitted, because he did so, he was required to comply with the rules governing attorneys in that state. He, therefore, violated New Jersey RPC 1.5(b) by failing to prepare a writing setting forth the basis or rate of the fee.

We determine that the remaining charges, (RPC 1.1(a) and (b), RPC 1.4(b), RPC 1.5(e), RPC 1.6, RPC 1.15, RPC 5.1, RPC 8.1(b), and RPC 8.4(a)) should be dismissed, as explained below.

As to the charge that respondent failed to communicate with a client, Noble testified that respondent never informed him that he was not admitted in New York. Respondent claimed that he had. Respondent also asserted that his office stationery showed that he is admitted in New Jersey. Respondent's file, however,

[5] Those exceptions are (a) the representation of a client where the fee to be charged is expected to be less than $3,000; (b) representation where the attorney's services are of the same general kind as previously rendered to and paid for by the client; (c) representation in domestic relations matters subject to Part 1400 of this Title; or (d) representation where the attorney is admitted to practice in another jurisdiction and maintains no office in the State of New York, or where no material portion of the services are to be rendered in New York. See 22 NYCRR §1215.2.

contained no letters to Noble. The receipt for the retainer, which was written on office stationery, was given to Noble six months after the beginning of the representation. Thus, even if respondent's stationery had contained information about his bar admission, Noble may not have been aware of it until well after the case had proceeded. In turn, respondent claimed that his file, which had been given to Noble without certain copies having been made, contained letters to Noble that would have revealed that he was not admitted in New York.

Similarly, Noble claimed that respondent never disclosed that Koppelman would have primary responsibility for his case. Respondent, in contrast, asserted that Noble was aware that Koppelman was the primary attorney, pointing to Koppelman's fourteen court appearances in the matter and to the stipulation, which provides that it was Koppelman's understanding that Noble was aware that Koppelman would be representing him at trial.

Although Noble claimed that respondent failed to return his telephone calls, he conceded that those calls were in connection with his efforts to obtain a refund of his legal fees, after the representation had ended. Furthermore, respondent pointed out that Koppelman had kept Noble informed about the status of his case, during the numerous court appearances.

Based on the foregoing, we cannot find by clear and convincing evidence that respondent failed to communicate with Noble.

The complaint also charged that respondent shared a fee with an attorney not in the same firm, without obtaining the client's consent, a violation of RPC 1.5(e). We note that there was no evidence that respondent shared a fee with Koppelman. Moreover, respondent testified that he had hired Koppelman as an employee and that, at some point, they had become partners. He produced a receipt that was given to Noble, prepared on letterhead bearing the name "Bronson and Koppelman." Although Koppelman denied that he and Bronson had been partners, the stipulation provided that he viewed himself as an independent contractor employed by respondent. Thus, any compensation that respondent paid to Koppelman was pursuant to an association of some kind. We, thus, find that respondent did not violate RPC 1.5(e).

According to the complaint, respondent's failure to keep Noble informed about the status of the matter "constitutes gross neglect and pattern of neglect in violation of RPC 1.1 and RPC 1.4." Thus, the only basis for the charges of gross neglect and pattern of neglect is the failure to communicate allegation. Because failure to communicate does not constitute gross neglect

or a pattern of neglect, we dismiss the RPC 1.1(a) and (b) charges.

The DEC found that respondent failed to maintain records; however, the basis of that finding is not clear. The complaint did not charge respondent with recordkeeping violations. Although attorneys are required to maintain trust receipts and disbursements journals for client trust funds, because respondent did not hold Noble's funds in trust, he had no obligation to maintain those records. We, thus, find that respondent did not fail to maintain required records.

The charge of failure to supervise an attorney is based solely on Noble's allegation that, at the civil proceeding that he filed against Koppelman and respondent, Koppelman revealed confidential information, that is, that Noble had been charged with grand larceny and falsifying business records. The criminal charges against Noble were a matter of public record and, therefore, not confidential. Moreover, RPC 1.6(d)(2) permits an attorney to reveal confidential information to establish a defense in a controversy between the lawyer and the client. The DEC, thus, properly found no violation of RPC 1.6. Because the charge of failure to supervise derived from the RPC 1.6 charge,

the DEC properly dismissed the charge that respondent violated RPC 5.1(b).

As to the failure to cooperate charge, the first grievance was dismissed because of the pending civil litigation that Noble had filed against respondent. The grievance was again docketed on July 5, 2005. After the investigator sent two letters to respondent asking for a reply to the grievance, respondent indicated that the civil matter remained pending. Thereafter, on September 28, 2005, respondent was arrested and incarcerated. His records apparently were destroyed by his landlord. Although it is possible that respondent prolonged the civil litigation to delay the ethics investigation, the record does not support a finding that he violated RPC 8.1(b).

Finally, there is no support for the charge that respondent violated RPC 8.4(a) (violation or attempt to violate the RPCs). We, therefore, dismiss that charge as well.

Although the presenter argued that respondent violated RPC 1.2 (failure to abide by the client's decisions concerning the scope of the representation), RPC 1.3 (lack of diligence), RPC 1.5(a) (unreasonable fee), RPC 1.15 (failure to safeguard property), and RPC 4.1 (false statement of a material fact to a third person), the complaint did not specifically charge these RPC violations. In

addition, the complaint alleged that respondent failed to return the unearned portion of a fee and failed to return Noble's file to him, but did not charge respondent with violating RPC 1.16(d). Because the complaint did not specifically charge respondent with violating the above RPCs, under R. 1:20-4(b), we are precluded from considering them.

In sum, we find that respondent engaged in the unauthorized practice of law by representing Noble in a New York case when respondent was not licensed to practice law in New York; that he failed to disclose to the New York court that he was not licensed there; and that he failed to memorialize the basis or rate of his fee, violations of RPC 5.5(a), RPC 3.3(a)(5), and RPC 1.5(b).

New Jersey attorneys who practice law in jurisdictions in which they are not licensed have been reprimanded. See, e.g., In re Benedetto, 167 N.J. 280 (2001) (attorney pleaded guilty to the unauthorized practice of law in South Carolina, a misdemeanor; the attorney had received several referrals of personal injury cases and had represented clients 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)

(attorney, 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); and In re Pamm, 118 N.J. 556 (1990) (attorney filed an answer and a 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; 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 In re Lawrence, 170 N.J. 598 (2002), an attorney received a three-month suspension for practicing in New York, although he was not admitted in that jurisdiction. That disciplinary matter, however, proceeded as a default and charged numerous other ethics infractions, which were deemed admitted. Specifically, the attorney agreed to file a motion in New York to reduce her client's restitution payments to the probation department. She 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.

The discipline imposed on attorneys who fail to disclose material facts to a tribunal ranges from an admonition to a suspension. See, e.g., In the Matter of Robin Kay Lord, DRB 01-250 (September 24, 2001) (admonition for attorney who failed to reveal her client's real name to a municipal court judge when her client appeared in court using an alias, thus resulting in a lower sentence because the court was not aware of the client's significant history of motor vehicle infractions; in mitigation, the attorney disclosed her client's real name to the municipal court the day after the court appearance, whereupon the sentence was vacated); In re Mazeau, 122 N.J. 244 (1991) (attorney reprimanded for failing to disclose to a court his representation of a client in a prior lawsuit, where that representation would have been a factor in the court's ruling on the attorney's motion to file a late notice of tort claim); In re Whitmore, 117 N.J. 472 (1990) (reprimand for municipal prosecutor who failed to disclose to the court that a police officer whose testimony was critical to the prosecution of a drunk-driving case intentionally left the courtroom before the case was called, resulting in the

dismissal of the charge); In re Hasbrouck, 185 N.J. 72 (2005) (three-month suspension imposed on attorney who did not disclose to a matrimonial court and to his adversary the disbursement of $600,000 to his client, contrary to a court order requiring the attorney to hold the funds in an interest-bearing account until further order of the court; other improprieties found were the attorney's failure to safeguard trust funds and violation of the final judgment of divorce); and In re Forrest, 158 N.J. 428 (1999) (six-month suspension for attorney who, in a personal injury case in which he represented a couple, did not disclose to his adversary, to an arbitrator, and to the court that the husband had died; at the arbitration proceeding, the attorney advised the wife not to disclose her husband's death and told the arbitrator that the husband was "unavailable;" the attorney later attempted to pursue a settlement with the adversary and disclosed the husband's death only after the court issued an order for the husband's medical examination; the attorney was moved by personal gain, in that the larger the settlement the larger his fee; the attorney had a prior private reprimand for negligent misappropriation and recordkeeping violations).

Conduct involving failure to prepare a writing stating the basis or rate of the fee, as required by RPC 1.5(c), results in

an admonition, even when accompanied by other, non-serious ethics offenses. See, e.g., In the Matter of Martin G. Margolis, DRB 02-166 (July 22, 2002) (attorney guilty of failing to prepare a written fee agreement, a violation of RPC 1.5(c), and taking an improper jurat, a violation of RPC 8.4(c)); In the Matter of Alan D. Krauss, DRB 02-041 (May 23, 2002) (attorney failed to prepare a written retainer agreement, grossly neglected a matter, lacked diligence in the representation of the client's interests, and failed to communicate with the client; violations of RPC 1.5(c), RPC 1.1(a), RPC 1.3, and RPC 1.4(a), respectively); and In the Matter of Seymour Wasserstrum, DRB 98-173 (August 5, 1998) (attorney failed to prepare a written retainer agreement for a contingent fee, a violation of RPC 1.5(c)).

In sum, practicing law in a jurisdiction where the attorney is not admitted usually results in a reprimand; an admonition is generally imposed for failure to set forth in writing the basis of a fee; and the discipline for failure to disclose a material fact to a tribunal ranges from an admonition to a suspension. Here, respondent's failure to disclose to the court that he was not admitted in New York is similar to the attorney's failure, in Mazeau, to reveal to the court that he had previously

represented the client in another matter. Mazeau received a reprimand.

In mitigation, respondent has practiced law for thirty-eight years and his only disciplinary history consists of a temporary suspension, following his guilty plea to illegally structuring monetary transactions. It is likely that he will receive severe discipline, based on that plea.

For the totality of respondent's conduct, we determine that he should be reprimanded. Members Lolla and Wissinger voted to impose a censure. Vice-Chair Frost recused herself.

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
Louis Pashman, Chair

By: Julianne K. DeCore
Julianne K. DeCore
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Larry Bronson
Docket No. DRB 08-121

Argued: July 17, 2008

Decided: September 3, 2008

Disposition: Reprimand

Members	Disbar	Suspension	Reprimand	Censure	Disqualified	Did not participate
Pashman			X			
Frost					X	
Baugh			X			
Boylan			X			
Clark			X			
Doremus			X			
Lolla				X		
Stanton			X			
Wissinger				X		
Total:			6	2	1	

Julianne K. DeCore
Julianne K. DeCore
Chief Counsel