SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 08-237
District Docket No. VIII-07-10E

IN THE MATTER OF	
NEAL M. POMPER	
AN ATTORNEY AT LAW	

Decision

Argued: November 20, 2008

Decided: December 17, 2008

Marc Bressler appeared on behalf of the District VIII Ethics Committee.

Respondent appeared pro se.

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

This matter came before us on a recommendation for a reprimand filed by the District VIII Ethics Committee ("DEC"), based on respondent's violations of RPC 5.5(a)(2) (assisting a person who is not a member of the bar in the performance of an

activity that constitutes the unauthorized practice of law) and RPC 8.4(a) (violating or attempting to violate the RPCs, knowingly assisting or inducing another to do so, or doing so through the acts of another). Respondent sent his paralegal with his client to a hearing, where the paralegal identified herself as an attorney, entered an appearance on the record, allowed herself to be addressed as "counselor," and acted as an advocate for the client. For the reasons expressed below, we conclude that respondent violated the charged RPCs and censure him for the misconduct.

Respondent was admitted to the New Jersey bar in 1982. At the relevant times, he maintained an office for the practice of law in Highland Park.

In 1986, respondent received a private reprimand for representing the buyer and the seller in a real estate transaction and, after a dispute arose between the parties, continuing to represent the seller. In the Matter of Neal M. Pomper, DRB 86-182 (December 23, 1986).

In 2004, respondent received an admonition as a result of his failure to prepare a written fee agreement in a post-judgment matrimonial matter and his agreement with another attorney to share his legal fee, without notification to the

client. In the Matter of Neal M. Pomper, DRB 04-216 (September 28, 2004).

On September 7, 2007, the DEC issued an ethics complaint that (when amended at the hearing) charged respondent with violating RPC 5.5(a)(2) and RPC 8.4(a). With respondent's consent, the facts underlying the charges were placed on the record by the presenter. Respondent offered testimony in mitigation of his misconduct.

According to the presenter, and as supported by the documents in this matter, on October 21, 2005, Bruce Finney retained respondent to represent him with respect to a child support hearing. Finney paid respondent a flat fee of $750.

Respondent met with Finney on one or two occasions. On a number of occasions thereafter, he permitted his paralegal/secretary, Larissa Sufaru, to meet with the client.

On October 24, 2005, respondent wrote to a Somerset County probation officer to request an adjournment of the support and paternity hearing, scheduled for November 4, due to his multiple court appearances scheduled on that date. Among other things, respondent wrote:

> I do not object to the Defendant, Bruce Finney, appearing just to have the paternity test taken if need be on November 4, 2005.

> However, the support hearing should be rescheduled until the results of the paternity test are received.

On February 9, 2006, the Superior Court of New Jersey, Somerset County, Chancery Division, Family Part issued an order requiring Finney to appear for a "hearing after blood test" on March 24, 2006. The notice expressly stated: "You may bring an attorney with you, although an attorney is not required."

On March 19, 2006, respondent wrote to the court, stating that he would "be retained for the support hearing . . . upon completion of the paternity test." Respondent noted that the paternity test was scheduled for March 21, 2006 and the support hearing was scheduled for March 24, 2006. He requested that the support hearing be adjourned until after the paternity test results "can be reviewed."

According to the presenter, at a May 5, 2006 hearing, respondent "allowed [Sufaru] to proceed to the courthouse . . . with the client," where the following took place:

> At that time, the hearing officer conducted a hearing after finding – after the test was published with regard to paternity, conducted a hearing with regard to the child support that was due at that time. Throughout the hearing, it was probably extensive because there were several breaks in the hearing where Ms. Surfai [sic] went out to the hall and had

> private discussions with Mr. Finney, he was at the hearing, but they left the referee to have different discussions.
>
> Throughout the hearing, the hearing officer referred to Ms. Surfai [sic] as counsel. She never corrected that. There is a question as to whether the client believes that she was an attorney or not, and I'm not even here to discuss that this morning.
>
> In any event, the hearing took place. There was a finding. There was [sic] numerous references to Ms. Surfai [sic] being an attorney.
>
> [Transcript of March 19, 2008 ethics hearing at page 7, lines 7-24.]

The hearing officer later referred the matter to the Committee on the Unauthorized Practice of Law ("UPL Committee"). Sufaru entered into an agreement with the UPL Committee, in which she acknowledged that she did not correct the hearing officer's misunderstanding that she was an attorney and did not ask for an adjournment of the hearing. The UPL Committee then referred the matter to the DEC.

In mitigation, respondent testified that, although Finney had received a notice of the May 5, 2006 hearing, respondent had not, despite having entered an appearance on behalf of the client. Respondent's records included only the notice of the "hearing after blood test."

Respondent testified that Finney had "problems . . . getting the results of the paternity test." In respondent's mind, there would not be a support hearing until the paternity aspect of the matter was resolved. Thus, when he "sent" Sufaru with Finney to the courthouse, he believed that there would only be "paternity that day, not the support hearing." Upon questioning by a DEC member, respondent stated that a non-lawyer could not represent a party at a paternity proceeding. Moreover, according to respondent, he did not handle paternity matters – only support hearings. He believed that it was simply a matter of getting the results of the test. Nevertheless, respondent acknowledged, the notice was for a paternity hearing.

Respondent testified that he had "severely admonished" Sufaru for proceeding with the support hearing. Moreover, he has "taken steps so that Ms. Sufai [sic] does not go into the building at my direction or accompany clients to the building on any matters." Finally, he returned the retainer to Finney.

In its report, the DEC observed that, although respondent stated that he had not received notice of the May 5, 2006 hearing, he knew that a hearing was scheduled, inasmuch as he sent Sufaru with Finney to it. Moreover, the DEC noted, respondent testified that a paternity hearing was sound-recorded

and that only a licensed attorney could represent a party. Nevertheless, he sent Sufaru to the hearing with his client. In addition, the DEC agreed that, at the paternity hearing, Sufaru represented herself to be an attorney and acted as an advocate.

The DEC considered respondent's return of the $750 fee to Finney to be "[s]omewhat in mitigation."

Based on these findings, the DEC recommended that respondent be reprimanded for his misconduct.

Following a de novo review of the record, we are satisfied that the DEC's finding that respondent's conduct was unethical is fully supported by clear and convincing evidence.

As respondent admitted, he violated RPC 5.5(a)(2) and RPC 8.4(a) when he told Sufaru to attend the paternity hearing where she engaged in the unauthorized practice of law. Respondent understood that a paternity hearing was sound-recorded and that a party could be represented only by a licensed attorney at such a proceeding.

RPC 5.5(a)(2) prohibits an attorney from assisting a person "who is not a member of the bar in the performance of activity that constitutes the unauthorized practice of law." By directing Sufaru to attend the hearing with Finney, where she proceeded to practice law, respondent assisted her in doing so.

RPC 8.4(a) prohibits an attorney from violating or attempting to violate the Rules of Professional Conduct, knowingly assisting or inducing another to do so, or do so through the acts of another. By virtue of respondent's violation of RPC 5.5(a)(2), he committed a per se violation of RPC 8.4(a).

When an attorney assists a non-lawyer in the unauthorized practice of law and also commits other violations of the RPCs, the discipline ranges from a reprimand to a lengthy suspension. See, e.g., In re Bevacqua, 174 N.J. 296 (2002) (reprimand for attorney who assigned an unlicensed lawyer to prepare a client for a deposition and to appear on the client's behalf; attorney committed other violations, including gross neglect, pattern of neglect, and lack of diligence; multiple mitigating factors, including lack of disciplinary history, his inexperience as an attorney, and conduct resulting from poor judgment, rather than venality); In re Ezor, 172 N.J. 235 (2002) (reprimand for attorney who knowingly assisted his father, a disbarred New Jersey attorney, in presenting himself as an attorney in a New Jersey litigation); In re Gottesman, 126 N.J. 376 (1991) (reprimand imposed on attorney who divided his legal fees with a paralegal and aided in the unauthorized practice of law by

allowing the paralegal to advise clients on the merits of claims and permitting the paralegal to exercise sole discretion in formulating settlement offers); In re Silber, 100 N.J. 517 (1985) (reprimand for attorney who failed to inform the court that his law clerk had made an ultra vires appearance; contrary to the attorney's instructions, the law clerk took it upon herself to represent a client at a hearing; although the attorney chastised the law clerk, he failed to advise the court of the incident and, later, when the attorney received a proposed form of order showing the law clerk as the appearing attorney, he failed to contact the court to correct the misrepresentation); In re Chulak, 152 N.J. 553 (1998) (three-month suspension for attorney who allowed a non-lawyer to prepare and sign pleadings in the attorney's name and to be designated as "Esq." on his attorney business account; the attorney then misrepresented to the court his knowledge of these facts); In re Gonzales, 189 N.J. 203 (2007) (three-month suspension for an attorney who egregiously "surrendered every one of her responsibilities" to the office manager and bookkeeper by permitting the bookkeeper to use a signature stamp on trust account checks and the office manager/paralegal to interview clients, execute retainer agreements in the attorney's

name, prepare and execute pleadings and releases; the office manager/paralegal also attended depositions and appeared in municipal court of behalf of the attorney's clients, among other things; the attorney also compensated the office manager based on his work as "a lawyer;" once the attorney learned of the officer manager/paralegal's actions, she contacted the proper authorities and participated in an investigation that led to his arrest); In re Cermack, 174 N.J. 560 (2003) (on motion for discipline by consent, attorney received a six-month suspension for entering into an agreement with a suspended lawyer that allowed him to continue to represent clients, though the attorney appeared as the attorney of record and handled court appearances; in some cases, the attorney took over the suspended lawyer's cases with the clients' consent and with the understanding that the cases would be returned to the suspended lawyer upon his reinstatement); In re Carracino, 156 N.J. 477 (1998) (six-month suspension for attorney who entered into a law partnership agreement with a non-lawyer, agreed to share fees with the non-lawyer, engaged in a conflict of interest, displayed gross neglect, failed to communicate with a client, engaged in conduct involving misrepresentation, and failed to cooperate with disciplinary authorities); In re Moeller, 177

N.J. 511 (2003) (one-year suspension for attorney who entered into an arrangement with a Texas corporation that marketed and sold living trusts to senior citizens; the attorney filed a certificate of incorporation in New Jersey on behalf of the corporation, was its registered agent, allowed his name to be used in its mailings, and was an integral part of its marketing campaign, which contained many misrepresentations; although the attorney was compensated by the corporation for reviewing the documents, he never consulted with the clients about his fee or obtained their consent to the arrangement; he also assisted the corporation in the unauthorized practice of law, misrepresented the amount of his fee, and charged an excessive fee); and In re Rubin, 150 N.J. 207 (1997) (one-year suspension in a default matter for attorney who assisted a non-lawyer in the unauthorized practice of law, improperly divided fees without the client's consent, engaged in fee overreaching, violated the terms of an escrow agreement, and misrepresented to the clients both the purchase price of a house and the amount of his fee).

Here, on the one hand, the evidence of respondent's misconduct is limited to his permitting Sufaru to meet with one client on several occasions and sending her to the courthouse on one occasion for what he believed was a paternity hearing. On

the other hand, respondent directed her to attend the hearing with the client. Although respondent claimed that he did not know that Sufaru would proceed to function as a lawyer at the hearing, his knowledge that a paternity hearing requires a lawyer to represent a party undercuts the veracity of his statement. Nevertheless, respondent admitted to his wrongdoing, refunded the client's retainer, and has taken steps to insure that Sufaru's misconduct is not repeated.

In our view, a reprimand is not sufficient discipline for respondent's conduct. Neither Bevacqua nor Gottesman, involved non-lawyers who appeared in court, represented themselves to be lawyers, and acted on behalf of clients. Although Silber involved a law clerk who engaged in this activity, the attorney was unaware of the law clerk's appearance, which took place contrary to his instructions. Admittedly, Silber failed thereafter to contact the court to correct its misunderstanding that the law clerk was a lawyer. However, he did not place the law clerk in the position of making that misrepresentation in the first place. Here, respondent directed Sufaru to go to court with the client to attend a proceeding that, by his admission, required the party to be represented by a lawyer.

His conduct was not only improper in its own right, but it also exposed Sufaru to criminal prosecution.

Respondent's misconduct was not as egregious as that of the attorneys who received suspensions, however. There is no evidence that respondent permitted Sufaru to be designated as an attorney on his business account, Chulak, supra, 152 N.J. 553; entered into either a law partnership and shared fees with her, Carracino, supra, 156 N.J. 477, or a secret agreement to permit her to practice law, Cermack, supra, 174 N.J. 560; or engaged in multiple violations of the RPCs, Moeller, supra, 177 N.J. 511, and Rubin, supra, 150 N.J. 207. Thus, absent any aggravating factors, precedent suggests that a censure is the maximum measure of discipline that could be imposed in this matter.

It is true that respondent has an ethics history consisting of a private reprimand (now an admonition) in 1986 and a reprimand in 2004. Nevertheless, given the passage of time (twenty years) since the private reprimand and the nature of the misconduct in the admonition case, an increase from a censure to a suspension would be unwarranted. We, therefore, determine to censure respondent for his misconduct. We also require him to attend ten hours of professional responsibility courses within a

year's time and to provide to the OAE proof of satisfactory completion of such courses.

Member Stanton 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
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 Neal M. Pomper
Docket No. DRB 08-237

Argued: November 20, 2008

Decided: December 17, 2008

Disposition: Censure

Members	Disbar	Suspension	Censure	Reprimand	Disqualified	Did not participate
Pashman			X			
Frost			X			
Baugh			X			
Boylan			X			
Clark			X			
Doremus			X			
Lolla			X			
Stanton						X
Wissinger			X			
Total:			8			1

Julianne K. DeCore
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Chief Counsel