

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 08-388
District Docket No. XIV-08-122E

IN THE MATTER OF
JOHN D. TALBOT
AN ATTORNEY AT LAW

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Decision

Argued: March 19, 2009

Decided: June 25, 2009

Walton W. Kingsbery, IV appeared on behalf of the Office of Attorney Ethics.

Respondent waived appearance for oral argument.

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"), following the Supreme Court of Pennsylvania's imposition of a six-month suspension on respondent for his practicing law in

that state when he was on inactive status. In its motion, the OAE recommended the imposition of either a reprimand or a censure. At oral argument before us, however, the OAE took the position that a reprimand, rather than a censure, is the appropriate degree of discipline for respondent's infraction. The OAE pointed out that, typically, Pennsylvania imposes a one-year-and-one-day suspension for conduct identical or similar to respondent's and that, in this instance, it imposed only a six-month suspension. We agree that a reprimand is the suitable sanction for respondent's transgressions.

Respondent was admitted to the Pennsylvania bar in 1999 and to the New Jersey bar in 2000. It does not appear that he ever practiced law in this state. He does not have a disciplinary history here. The New Jersey Lawyers' Fund for Client Protection ("CPF") recorded respondent's status as "retired" for the years 2004 through 2006.

The facts are taken from the Joint Petition in Support of Discipline on Consent, which was submitted to the Disciplinary Board of the Supreme Court of Pennsylvania ("the petition").

On March 28, 2005, the Supreme Court of Pennsylvania transferred respondent to inactive status "at a time when Respondent was not practicing law." The reason for the transfer

was respondent's failure to comply with Pennsylvania's continuing legal education requirements. The effective date of the transfer was April 27, 2005.

Respondent was notified of his status and asked to complete a statement of compliance. On June 6, 2005, the Disciplinary Board of the Supreme Court of Pennsylvania received an executed statement from respondent, in which he certified his compliance with the provisions of the suspension order and other applicable rules.

Approximately one year before respondent's suspension in Pennsylvania, he had informed the CPF that he was "exempt from paying the New Jersey annual fee because [he] was 'completely retired from the practice of law . . . in any jurisdiction' and that [he] would 'notify the fund of any change.'" As stated previously, the CPF records show respondent as being retired for the years 2004, 2005, and 2006. Yet, on his Pennsylvania attorney's annual fee form, respondent reported that his status in New Jersey was active. Respondent claimed that he had mistakenly believed that he was active in New Jersey and that he had no intent to misrepresent his status.

Notwithstanding respondent's retired status in New Jersey and his inactive status in Pennsylvania, he began employment

with the King of Prussia law firm of Stevens & Lee, on February 19, 2007. The firm's internet website stated that respondent concentrated his practice in the areas of "mergers and acquisitions, capital formation and other securities law matters." He was listed as counsel of record for a holding company, in its registration statement with the SEC.

In June 2007, respondent learned that the Pennsylvania Office of Disciplinary Counsel ("ODC") had been making "inquiries." In that same month, he paid the required sum to the CPF to regain active status in New Jersey. Respondent claimed, however, that, in February 2007, he had contacted the New Jersey Board of Bar Examiners, who had informed him that he was in good standing in the state and that his status was "active." With respect to his legal work in Pennsylvania, respondent stated to the ODC that "his work at all times was reviewed and utilized by an attorney at the firm who was on active status."

Respondent returned to active status in Pennsylvania in August 2007, "prior to his subsequent complete cessation of the practice of law which was then followed by his temporary suspension imposed by Order of February 14, 2008."

According to the petition, respondent's conduct violated a number of Pennsylvania rules of disciplinary enforcement governing inactive attorneys, as well as RPC 5.5(a) (practicing while ineligible). The petition identified the following mitigating factors: (1) respondent's remorse, (2) his admission of wrongdoing, (3) his cooperation with the ODC, (4) his unblemished disciplinary record, (5) the fact that he was not practicing law at the time that he was placed on inactive status in Pennsylvania, (6) the fact that his unauthorized practice of law in Pennsylvania did not exceed six months, and (7) his claim that the New Jersey Board of Bar Examiners had informed him that he was on active status and in good standing.

The petition recommended that respondent be suspended for six months, retroactive to his February 14, 2008 temporary suspension in Pennsylvania. The Disciplinary Board of the Supreme Court of Pennsylvania accepted the recommendation, as did the Pennsylvania Supreme Court. Respondent was suspended on August 22, 2008, retroactive to February 14, 2008.

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 it rests for purposes

of a disciplinary proceeding in this state. We, therefore, adopt the findings in the Joint Petition in Support of Discipline on Consent, which was submitted to and approved by the Disciplinary Board of the Supreme Court of Pennsylvania and the Pennsylvania Supreme Court.

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

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.

Subsection (E) applies in this matter because respondent's unethical conduct warrants substantially different discipline in New Jersey from that imposed in Pennsylvania. Respondent's practicing while ineligible does not warrant a six-month suspension in New Jersey, under the circumstances.

"[A] final adjudication in another court, agency or tribunal, that an attorney admitted to practice in this state . . . is guilty of unethical conduct in another jurisdiction . . . shall establish conclusively the facts on which it rests for purposes of a disciplinary proceeding in this state." R. 1:20-14(a)(5). Thus, with respect to motions for reciprocal discipline, "[t]he sole issue to be determined . . . shall be the extent of final discipline to be imposed." R. 1:20-14(b)(3).

The facts set forth in the petition clearly and convincingly establish that respondent practiced law while ineligible in Pennsylvania. On motions for reciprocal discipline, Pennsylvania attorneys who engage in the unauthorized practice of law in that state are typically reprimanded in New Jersey when they are aware of their ineligibility and practice anyway. See, e.g., In re Marzano, 195 N.J. 9 (2008) (motion for reciprocal discipline; attorney

represented three clients after she was placed on inactive status in Pennsylvania; the attorney was aware of her ineligibility); In re Davis, 194 N.J. 555 (2007) (motion for reciprocal discipline; attorney represented a client in Pennsylvania when the attorney was ineligible to practice law in that jurisdiction as a non-resident active attorney and, later, as an inactive attorney; the attorney also misrepresented his status to the court, to his adversary, and to disciplinary authorities; extensive mitigation considered); In re Coleman, 185 N.J. 336 (2005) (motion for reciprocal discipline; attorney who was ineligible to practice law in Pennsylvania for nine years signed hundreds of pleadings and received in excess of \$7,000 for those services); and In re Forman, 178 N.J. 5 (2003) (for a period of twelve years, the attorney practiced law in Pennsylvania while on the inactive list; compelling mitigating factors considered).

Here, respondent knew that he was ineligible to practice law in Pennsylvania. Thus, a reprimand is the appropriate measure of discipline for his violation of RPC 5.5(a).

Chair Pashman and Vice Chair Frost 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
Edna Y. Baugh, Acting Chair

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

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

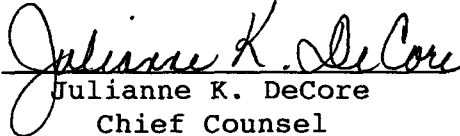
In the Matter of John D. Talbot
Docket No. DRB 08-388

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Disposition: Reprimand

<i>Members</i>	Disbar	Suspension	Reprimand	Dismiss	Disqualified	Did not participate
Pashman						X
Frost						X
Baugh			X			
Clark			X			
Doremus			X			
Lolla			X			
Stanton			X			
Wissinger			X			
Total:			5			2


Julianne K. DeCore
Chief Counsel