

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 06-026
District Docket No. XIV-04-597E

IN THE MATTER OF
GEORGE A. BODE
AN ATTORNEY AT LAW

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Decision

Argued: March 16, 2006

Decided: April 28, 2006

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

Respondent did not appear for oral argument, despite proper service.

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

This matter was before us on a motion for reciprocal discipline filed by the Office of Attorney Ethics ("OAE") pursuant to R. 1:20-14(a), following respondent's three-year suspension in Colorado, effective August 20, 2005. The Colorado action was based on respondent's seven-year suspension from

practice before the United States Patent and Trademark Office ("USPTO" or "PTO"), four years of which were stayed. Respondent did not inform the OAE of either of his suspensions, as required by R. 1:20-14(a)(1).

Respondent was admitted to the New Jersey bar in 1976 and to the Colorado bar in 1991. He was licensed to practice before the USPTO "since at least 1980." He is also a member of the Louisiana and Florida bars. At the relevant times, his primary office was in New Orleans, Louisiana, with additional offices in Florida. Respondent has no history of discipline in New Jersey. He has been on the New Jersey Lawyers' Fund for Client Protection list of ineligible attorneys since September 26, 2005.

As mentioned above, following a hearing before an administrative law judge ("ALJ"), respondent's ability to practice before the USPTO was suspended for a seven-year period on August 21, 2003. In lieu of serving the last four years, respondent was placed on probation. The ALJ's initial decision was upheld on appeal, in a final decision of the USPTO dated July 28, 2004. Respondent tendered his resignation or otherwise terminated his registration to practice before the USPTO, effective August 26, 2004.

When Colorado instituted reciprocal disciplinary proceedings, respondent failed to appear or file any reply. As a result,

Colorado suspended him for a three-year period, effective August 20, 2005.

Respondent's misconduct included backdating certificates of mailing in connection with matters pending before the USPTO; failing to keep clients informed about the status of their patent applications, which resulted in the abandonment of eight patent and trademark applications; neglecting legal matters; failing to carry out professional contracts of employment; and failing to reply to requests for information from the USPTO disciplinary authorities.

Respondent's ethics violations were more specifically set forth in Colorado's ethics complaint, which is Exhibit 1 to the Colorado Supreme Court's decision. The ethics complaint alleged that respondent was guilty of:

- a. Backdating three certificates of mailing in connection with matters pending before the PTO, resulting in violations of United States Patent and Trademark Office ("USPTO") Disciplinary Rule 10.23(b)(4) (a practitioner shall not engage in conduct involving misrepresentation)^[1]; USPTO Disciplinary Rule 10.23(b)(6) (a practitioner shall not engage in any other conduct that adversely reflects upon the practitioner's fitness to

^[1] USPTO Disciplinary Rule 10.23(b)(4) corresponds to Colo. RPC 8.4(c) (prohibiting an attorney from engaging in conduct involving dishonesty, deceit, misrepresentation or fraud).

practice before the Office)[²]; and USPTO Disciplinary Rule 10.23(c)(9)(knowingly misusing certificates of mailing).[³]

- b. Failing to communicate with clients, resulting in eight patent and trademark applications being abandoned, in violation of USPTO Disciplinary Rule 10.23(c)(8) (failing to inform a client or former client or failing to timely notify the Office of an inability to notify a client or former client of correspondence received from the Office or the client's or former client's opponent in an inter partes [sic] proceeding before the Office when the correspondence (i) could have a significant effect on a matter pending before the Office, (ii) is received by the practitioner on behalf of a client or former client and (iii) is correspondence of which a reasonable practitioner would believe under the circumstances the client or former client should be notified).[⁴]
- c. Neglecting legal matters, in violation of USPTO Disciplinary Rule 10.77(c) (A practitioner shall not neglect a legal matter entrusted to the practitioner).[⁵]

[²] USPTO Disciplinary Rule 10.23(b)(6) corresponds to Colo. RPC 8.4(h) (prohibiting an attorney from engaging in conduct that reflects on a lawyer's fitness to practice law).

[³] There is no rule in Colorado that directly corresponds to Disciplinary Rule 10.23(c)(9), although this conduct may be considered dishonest, in violation of Colo. RPC 8.4(c).

[⁴] USPTO Disciplinary Rule 10.23(c)(8) generally corresponds to the duty to communicate set forth in Colo. RPC 1.4 (communication).

[⁵] USPTO Disciplinary Rule 10.77(c) corresponds to Colo. RPC 1.3 (neglect).

- d. Failing to carry out contracts of employment, in violation of USPTO Disciplinary Rule 10.84(a)(2) (A practitioner shall not intentionally fail to carry out a contract of employment entered into with a client for professional services, but a practitioner may withdraw as permitted under §10.40, §10.63, and §10.66).^[6]
- e. Failing to respond to the OED's [Office of Enrollment and Discipline ("OED") of the USPTO] requests for information, in violation of USPTO Disciplinary Rule 10.23(b)(5) (A practitioner shall not engage in conduct that is prejudicial to the administration of justice)^[7]; USPTO Disciplinary Rule 10.23(b)(6) (a practitioner shall not engage in conduct that adversely reflects upon the practitioner's fitness to practice before the Office)^[8]; and USPTO Disciplinary Rule 10.23(c)(16) (willfully refusing to reveal or report knowledge or evidence to the Director contrary to §10.24 or paragraph (b) of §10.131).^[9]

[OAEbEx.D.Ex.1.]¹⁰

^[6] There is no rule in Colorado that directly corresponds to Disciplinary Rule 10.84(a)(2).

^[7] USPTO Disciplinary Rule 10.23(b)(5) corresponds to Colo. RPC 8.4(d) (prohibiting an attorney from engaging in conduct prejudicial to the administration of justice).

^[8] USPTO Disciplinary Rule 10.23(b)(6) corresponds to Colo. RPC 8.4(h) (prohibiting an attorney from engaging in conduct that adversely reflects on a lawyer's fitness to practice law).

^[9] There is no rule in Colorado that directly corresponds to Disciplinary Rule 10.23(c)(16).

¹⁰ OAEb refers to the OAE's brief dated January 19, 2006.

The ALJ's initial decision in the USPTO matter underscored the seriousness of respondent's submission of misdated certificates of mailing:

The PTO is [the] Federal government entity which bears the formidable responsibility of processing all the thousands of patent and trademark applications it receives in a fair and efficient manner for the benefit not only of the applicants individually but the general public as well. The granting of a patent creates a potentially extraordinarily valuable property right for one or more inventors and deprives everyone else of the ability to obtain the same right on the invention In order to achieve its mission and maintain the integrity of the Office, the PTO relies heavily upon the honor of the select bar of attorneys and practitioners allowed to appear before it, in whom it places its trust to deal with it in a forthright manner. . . . By misdating the certificates of mailing, and attempting to rig the system for the benefit of his clients over those of others, [respondent] violated that trust and undermined the integrity of the national patent and trademark system.

[OAEbEx.A37.]

According to the ALJ's decision, one of respondent's most serious violations was his ongoing pattern and practice of failing to communicate with his clients and failing to perform the work for which he had been retained. The decision further observed that there was a "thread of dishonesty" that ran throughout the whole case:

The record reflects that [respondent] did not honestly date his certificates of mailing, did not honestly disclose his actions to the OED in his responses to the RFIs [Requirements for Information] or honestly reveal his unwillingness to answer the RFIs, did not honestly reveal the state of his clients' patent applications to them, and he did not honestly deal with this Tribunal Respondent has demonstrated no remorse for his actions. He never expressed any regret that his clients . . . [felt] that his work was unsatisfactory. He never expressed any regret that the OED had to go to all this effort including sending him letter after letter after letter, just to have him focus his attention on the seriousness of his actions.

[OAEbEx.A39.]

Colorado based its disciplinary action on the USPTO matter. The Colorado rules governing the imposition of reciprocal discipline for lawyer misconduct are similar to New Jersey's. Under Colorado's C.R.C.P. 251.21(d), the same discipline is imposed in Colorado as in the foreign jurisdiction. Attorneys, however, have the opportunity to challenge the validity of discipline imposed elsewhere on any of the following bases: 1) the procedure in the other jurisdiction did not comport with due process requirements; 2) the proof upon which the other jurisdiction relied is so infirm that the Court cannot accept the determination as final and remain consistent with its duty; 3) the imposition of the same discipline would result in "grave

injustice"; or 4) the misconduct proved warrants a "substantially different" form of discipline. C.R.C.P. 251.21(d)(1)-(4).

Respondent failed to appear in the Colorado action or to present any evidence or argument that the misconduct established by the USPTO warranted different discipline. The Colorado Supreme Court found that respondent was afforded due process in the USPTO proceedings, that respondent had been afforded ample opportunity to reply to the Colorado complaint, and that reciprocal discipline was appropriate. Colorado, thus, determined that a three-year suspension was similar to the sanction imposed by the USPTO.

The OAE argued that for respondent's misconduct, which, according to the OAE, included violations of rules comparable to our RPC 1.1(b) (pattern of neglect), RPC 1.4, presumably (a) (failure to communicate with clients), RPC 1.16, presumably (b) (failure to protect a client's interests upon termination of the representation), RPC 8.4(b) (committing a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects), RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation), and RPC 8.4(d) (conduct prejudicial to the administration of justice), a three-year suspension is warranted. The OAE also urged us to

condition respondent's reinstatement in New Jersey on his reinstatement in Colorado.

Upon a review of the full 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 adopt the findings of the Supreme Court of Colorado and find violations of RPC 1.1(a) (gross neglect); RPC 1.1(b) (pattern of neglect); RPC 1.4(a) (failure to communicate with clients); RPC 1.16(b) (failure to protect clients' interests upon termination of representation); RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation); RPC 8.4(d) (conduct prejudicial to the administration of justice); and RPC 8.1(b) (failure to reply to a lawful demand for information from a disciplinary authority). We find no evidence, however, that respondent violated RPC 8.4(b) (committing a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer) and, in fact, the OAE conceded before us that the record cannot sustain a finding of that violation.

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.

We agree with the OAE that a review of the record does not reveal any conditions that fall within the scope of subparagraph (A) through (E).

Generally, the level of discipline imposed in disciplinary matters involving multiple ethics violations, most which occur in multiple matters, is a three-year suspension. See, e.g., In re Schiavo, 176 N.J. 149 (2003) (three-year suspension where in six matters the attorney engaged in gross neglect, pattern of neglect, lack of diligence, failure to communicate with client, failure to timely remit trust funds to a client or third person, failure to take steps reasonably practicable to protect the client's interest upon termination of representation, negligent misappropriation of funds, recordkeeping violations, conduct prejudicial to the administration of justice, failure to cooperate with disciplinary

authorities, and conduct involving dishonesty, fraud, deceit or misrepresentation; the attorney had a prior three-month suspension); In re Fornaro, 175 N.J. 450 (2003) (three-year suspension for an attorney who in one matter engaged in conduct involving dishonesty, deceit or misrepresentation, conflict of interest, failure to disclose a material fact to a tribunal, failure to withdraw when a lawyer may be called as a witness, use of attorney letterhead while suspended, and turning a pending matter over to another attorney during the suspension; the attorney had a prior reprimand, and a three-month and a two-year suspension); In re Gaffney, 146 N.J. 522 (1996) (three-year suspension for an attorney who committed misconduct in eleven matters, including gross neglect, pattern of neglect, lack of diligence, failure to communicate with clients, failure to cooperate with disciplinary authorities, failure to return client files, failure to reduce a fee agreement to writing, misrepresentations, conduct prejudicial to the administration of justice, conduct intended to disrupt a tribunal, and knowingly disobeying an obligation under the rules of a tribunal; the attorney had a prior public reprimand, and a two-and-one-half-year suspension); In re Beck, 143 N.J. 135 (1996) (three-year suspension where attorney engaged in multiple violations of various ethics rules in eleven separate cases, including pattern of neglect, lack

of diligence, failure to communicate with clients, improperly terminating client representation, lack of candor toward a tribunal, lack of truthfulness in statements to others, unauthorized practice of law, and conduct prejudicial to the administration of justice; the attorney had two prior private reprimands, a public reprimand, and a three-month suspension); and In re Turner, 120 N.J. 706 (1990) (three-year suspension where the attorney engaged in gross neglect, pattern of neglect, lack of diligence, failure to communicate with clients, conflict of interest, misleading communications about his services and recordkeeping violations; the misconduct encompassed the representation of thirteen clients over several years).

Respondent's conduct was serious. Among other transgressions, he backdated certificates of mailing in matters pending before the USPTO and abandoned eight patent and trademark applications. As the ALJ emphasized, respondent's misconduct carried serious consequences with it. Because there is only a "select bar of attorneys" capable of appearing before the USPTO, respondent's clients may have been limited in their ability to seek alternative representation. In addition, respondent failed to cooperate with the ethics investigation in the USPTO matter, and also failed to defend against the Colorado charges.

Although this matter is distinguishable from the previously cited cases in one respect, respondent's lack of an ethics history, we see no reason to deviate from the same quantum of discipline (three-year suspension) as that imposed by Colorado and, in effect, by the USPTO (seven-year suspension, with four years stayed). We, therefore, determine to impose a three-year prospective suspension.

We further determine to require respondent to reimburse the Disciplinary Oversight Committee for administrative costs.

Disciplinary Review Board
Mary J. Maudsley, Chair

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

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

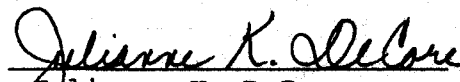
In the Matter of George A. Bode
Docket No. DRB 06-026

Argued: March 16, 2006

Decided: April 28, 2006

Disposition: Three-year suspension

Members	Disbar	Three-year Suspension	Reprimand	Dismiss	Disqualified	Did not participate
Maudsley		X				
O'Shaughnessy		X				
Boylan		X				
Holmes		X				
Lolla		X				
Neuwirth		X				
Pashman		X				
Stanton		X				
Wissinger		X				
Total:		9				


Julianne K. DeCore
Chief Counsel