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SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 05-193
District Docket No. XIV-04-435E

IN THE MATTER OF
RONALD D. BROWN
AN ATTORNEY AT LAW

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Decision

Argued: October 20, 2005

Decided: December 7, 2005

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

William A. Kraus appeared on behalf of respondent.

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

This matter was before us on a motion for final discipline filed by the Office of Attorney Ethics ("OAE") following respondent's guilty plea to an information charging him with three counts of False Statements to a Federal Agency or Department, a

violation of 18 U.S.C. § 1001(a)(2). This section states, in relevant part:

whoever, in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States, knowingly and willfully . . . (2) makes any materially false, fictitious, or fraudulent statement or representation . . . shall be fined under this title, imprisoned not more than 5 years

Respondent was admitted to the New Jersey bar in 1976. In 1991, he was suspended for six months for recordkeeping violations, failure to promptly deliver funds to a third person, and failure to keep a client reasonably informed about the status of his matter. In re Brown, 123 N.J. 571 (1991). In 1995, he was suspended for three years for misconduct in three matters, including gross neglect, pattern of neglect, failure to consult with his client prior to settling the case, failure to communicate with the client, and charging an unreasonable fee. In re Brown, 141 N.J. 13 (1995). Respondent never applied for reinstatement.

By letter dated August 25, 2004, the U. S. Department of Justice ("U.S.D.O.J.") reported to the Office of Disciplinary Review Board Counsel that respondent, a former Special Assistant United States Attorney, had represented the United States for several years while his license was suspended.

From 2000 to 2003, respondent worked for the Department of the Army, Picatinny Arsenal, New Jersey, representing the United States in approximately 1,627 traffic and misdemeanor matters. The U.S.D.O.J. further reported that respondent had signed certifications in 2000, 2002, and 2003, falsely certifying that he was licensed and eligible to practice law in New Jersey. The Department of the Army was unable to locate a certification for 2001. Respondent resigned from his position in July 2003.

On August 2, 2004, respondent entered a guilty plea to a three-count information charging him with violating 18 U.S.C.A. § 1001(a)(2). According to the information, respondent's employment as an attorney for the Department of the Army's Tank-Automotive and Armaments Command was conditioned upon an annual attorney qualification statement wherein respondent had to certify that he was currently licensed and eligible to practice law under the laws of the State of New Jersey. The information charged that, on February 22, 2000, February 28, 2002, and February 3, 2003, respondent signed attorney qualification statements falsely certifying that he was currently licensed and eligible to practice law in New Jersey, knowing that his license to practice had been suspended in May 1991, and that it had not been reinstated.

The Honorable Stanley R. Chesler, U.S.D.J., elicited the factual basis for respondent's plea:

THE DEFENDANT [respondent]: [I]n '91 I believe it was, I was suspended, and from '91 till about '96 I more or less -- I should mention the period of suspension was two and a half or three years, as I recall.

But after about four or five years I was writing briefs for other attorneys and ghost writing stuff, researching on a free-lance basis and then there were a number of deaths in my family, and [sic] got a little desperate, And [sic] I was looking for something that, what I thought would be administrative that required a legal expertise but obviously wouldn't require that I actually be in court, for reasons that are obvious since I was still under suspension, so, even though it was seven or eight years later, I saw the ad for Picatinny Arsenal and I thought that would fit the bill, and I ended up working for Picatinny Arsenal for four years

THE COURT: Mr. Brown, from approximately April 1999 through July of 2003, were you employed as an attorney for the Department of the Army Tank Automotive and Armaments Commands of the Armaments Research and Development Research Center located at the Picatinny Arsenal in New Jersey, hereinafter referred to as TACOM?

THE DEFENDANT: Yes, I was.

THE COURT: In connection with your duties as an attorney for TACOM, were you appointed as a Special Assistant U. S. Attorney for the District of New Jersey from in or about June 1999 through in or about July 2003?

THE DEFENDANT: That's correct, sir.

THE COURT: As a Special Assistant U. S. Attorney for the District of New Jersey, did you prosecute misdemeanor and traffic violations occurring on the Picatinny Arsenal before the U. S. Magistrate Judge at Ft. Monmouth, New Jersey?

THE DEFENDANT: That is correct, sir.

THE COURT: As a condition of your employment statement [sic] certifying that you were currently licensed and eligible to practice law under the laws of the state of New Jersey --

THE DEFENDANT: That's correct.

THE COURT: -- would you agree that it was a requirement of your employment as an attorney for TACOM to be a member in good standing of the bar of the state of New Jersey?

THE DEFENDANT: Yes, sir.

. . . .

THE COURT: To this date have you submitted an application for reinstatement to the practice of law to the Supreme Court of New Jersey?

THE DEFENDANT: No, I have not, your Honor.

THE COURT: To this date has the Supreme Court issued an order reinstating you to the practice of law under the laws of the state of New Jersey?

. . . .

THE DEFENDANT: No, it has not.

THE COURT: Thus, you've been suspended from the practice of law under the laws of New Jersey since May 1st, 1991?

THE DEFENDANT: That's correct.

[OAEbEx.E at 19-22.¹]

Respondent also admitted that, on February 22, 2000, February 28, 2002 and February 3, 2003, he signed attorney qualification statements certifying that he was eligible to practice law in New Jersey, even though he knew that his license had been suspended. Respondent "willfully" signed the false certifications, with knowledge that doing so was wrong.

On January 28, 2005, respondent was sentenced to three years' probation, on each count, to run concurrently; was fined \$1,000; and was assessed \$300.

The OAE argued that the totality of respondent's actions 1) his conviction for making false statements to a federal agency; 2) his practicing law while suspended; and 3) his prior ethics history (six-month and three-year suspensions), warrant the ultimate sanction of disbarment.

Upon a de novo review of the full record, we determine to grant the OAE's motion for final discipline.

Respondent's guilty plea to a three-count information charging him with violating 18 U.S.C.A. § 1001(a)(2) constitutes conclusive proof of his guilt (R. 1:20-13(c)(1) and (2); In re Gipson, 103 N.J. 75, 77 (1986)). Respondent's misconduct

¹ OAEb refers to the OAE's June 10, 2005 brief.

constituted violations of RPC 8.4(b) (committing a crime that reflects adversely on his honesty, trustworthiness or fitness as a lawyer); RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation); RPC 5.5(a)(1) (unauthorized practice of law - practicing law while suspended); and RPC 8.4(d) (conduct prejudicial to the administration of justice).

The sole issue left for determination is the quantum of discipline to be imposed. R. 1:20-13(c)(2); In re Lunetta, 118 N.J. 443, 445 (1989); In re Infinito, 94 N.J. 50, 56 (1983). The primary purpose of discipline is not to punish the attorney, but to preserve public confidence in the bar. In re Kusher, 101 N.J. 397, 400 (1986). The level of discipline imposed in disciplinary matters based on the commission of a crime depends on a number of factors, including the "nature and severity of the crime, whether the crime is related to the practice of law, and any mitigating factors such as respondent's reputation, his prior trustworthy conduct, and general good conduct." In re Maqid, 139 N.J. 449, 452 (1995), citing In re Lunetta, supra, 118 N.J. at 445-46.

Respondent's conduct here was serious. He knowingly practiced law while suspended for a number of years. He admitted that, initially he was writing briefs for other attorneys and doing research on a "free-lance basis." Later, he was appointed as a

Special Assistant U. S. Attorney for the United States Army. While employed there, he handled approximately 1,627 cases before a United States Magistrate. In order to obtain and keep this position, he falsely certified that he was "eligible" to practice law in New Jersey. Rather than filing a petition for reinstatement, respondent continued to practice law while suspended. To all concerned, however, he held himself out to be an attorney in good standing. His conduct in this regard was deceitful.

The level of discipline for practicing law while suspended generally ranges from a lengthy suspension to disbarment, depending on a number of factors, including the attorney's level of cooperation with disciplinary authorities, the presence of other misconduct, and the attorney's disciplinary history. See In re Olitsky, 174 N.J. 352 (2002) (attorney disbarred for practicing law while suspended, knowingly making a false statement of fact or law to a tribunal, knowingly offering evidence known to be false, displaying conduct involving dishonesty, fraud, deceit or misrepresentation and conduct prejudicial to the administration of justice, and violating R. 1:20-20(b) governing suspended attorneys); In re Costanzo, 128 N.J. 108 (1992) (attorney disbarred for practicing law while suspended, gross neglect, lack of diligence, failure to keep clients reasonably informed and to

explain matters to the extent necessary to permit them to make informed decisions about the representation, pattern of neglect, and failure to provide a written basis for the fee); In re Goldstein, 97 N.J. 545 (1984) (attorney disbarred for misconduct in eleven matters and for practicing law while temporarily suspended by the Court and in violation of an agreement with the Disciplinary Review Board that he limit his practice to criminal matters); In re Marra, 183 N.J. 260 (2005) (three-year suspension where an attorney was found guilty, for the second time, of practicing law in three matters while suspended; the attorney had a prior one-year suspension for the same conduct); In re Kasdan, 132 N.J. 99 (1993) (three-year suspension, where the attorney deliberately continued to practice law after the Court denied her request for a stay of her suspension; the attorney failed to inform her clients, her adversary and the courts of her suspension, failed to keep complete trust records, and failed to advise her adversary of the location and amount of escrow funds; the attorney was also guilty of conduct involving dishonesty, fraud, deceit or misrepresentation; the attorney had been previously suspended for three months); In re Beltre, 130 N.J. 437 (1992) (attorney suspended for three years for appearing in court in one matter after having been suspended and for misrepresenting his status to the judge, failing to carry out his responsibilities as an escrow agent, lying to us about

maintaining a bona fide office, and failing to cooperate with an ethics investigation; the attorney had a prior three-month suspension from which he had not been reinstated); In re Wheeler, 140 N.J. 321 (1995) (attorney suspended for two years for practicing law while suspended, making multiple and repeated misrepresentations about the status of cases to clients, failing to reply to clients' repeated requests for information, and displaying gross neglect, pattern of neglect, lack of diligence, conflict of interest, dishonesty in issuing a check with knowledge that there were insufficient funds to cover it, negligent misappropriation of escrow funds, and failure to cooperate with disciplinary authorities)²; and In re Wheeler, 163 N.J. 64 (2000) (attorney received an additional three-year suspension for handling three matters without compensation, with the knowledge that he was suspended, holding himself out as an attorney, in violation of RPC 8.4(c) and RPC 8.4(d), and failing to comply with Administrative Guideline No. 23 (now R. 1:20-20) relating to suspended attorneys). But see In re Lisa, 158 N.J. 5 (1999) (one-year suspension where the attorney appeared pro hac vice in a New York court during his New Jersey suspension, without disclosing his suspended status to

² In that same order, the Court imposed a retroactive one-year suspension on the attorney for retention of unearned retainers, lack of diligence, failure to communicate with clients, and misrepresentations. That matter came to us as a motion for reciprocal discipline.

the New York judge; the Court considered that a serious childhood incident 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 a criminal proceeding; the Court also noted that there was no venality or personal gain involved and that the attorney did not charge for the representation).

Respondent's brief in opposition to the OAE's motion explained that "[h]e placed several calls to people who could assist him in the [reinstatement] process and obtained the necessary paperwork though he never completed the application." Respondent did not address the reason for this omission. He, nevertheless, chose to ignore the Court's order of suspension and continued to practice law -- first writing briefs and performing "free-lance" work for other attorneys -- later, in April 1999, appearing in court for the United States Army. Respondent also misrepresented his status on at least three occasions, by fraudulently certifying that he was eligible to practice law in New Jersey. As a result, he obtained an appointment as a Special Assistant United States Attorney.

In aggravation, we have considered respondent's ethics history (a six-month and three-year suspension). We have also considered that the prior disciplinary matters involved ethics


transgressions unrelated to the one at hand. Thus, it cannot be said that respondent has not learned from prior mistakes. In mitigation, we have considered that respondent was in dire need of funds at the time of his misconduct and that, apparently, his employment with the Army did not result in further ethics breaches. Based on these considerations, we determine that a one-year suspension adequately addresses respondent's violations.

Chair Maudsley, Member Lolla, and Member Wissinger determined that a three-year suspension is warranted for respondent's transgressions. Members Boylan and Neuwirth did not participate.

We also reiterate the conditions imposed in the prior case: prior to reinstatement, respondent must submit proof of completion of the Skills and Methods courses and proof of reimbursement to the New Jersey Lawyers' Fund for Client Protection for the claims paid in his behalf.

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
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

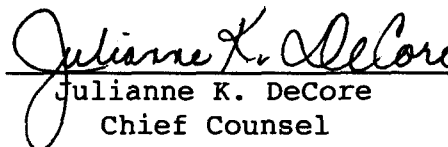
In the Matter of Ronald D. Brown
Docket No. DRB 05-193

Argued: October 20, 2005

Decided: December 7, 2005

Disposition: One-year suspension

Members	One-year Suspension	Reprimand	Three-year suspension	Disqualified	Did not participate
Maudsley			X		
O'Shaughnessy	X				
Boylan					X
Holmes	X				
Lolla			X		
Neuwirth					X
Pashman	X				
Stanton	X				
Wissinger			X		
Total:	4		3		2


Julianne K. DeCore
Chief Counsel