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SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 05-019
District Docket No. XIV-04-433E

IN THE MATTER OF
GEORGE E. KERSEY
AN ATTORNEY AT LAW

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Decision

Argued: April 21, 2005

Decided: July 7, 2005

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

Respondent appeared pro se.

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, following respondent's disbarment in New Hampshire for having violated RPC 3.4(c) (disobeying an obligation under the rules of a tribunal), and RPC 5.5(a)

(practicing law where doing so violates the regulation of the legal profession - practicing law while suspended).

Respondent was admitted to the New Jersey bar in 1963 and the bars of New York, New Hampshire, Massachusetts, and the District of Columbia.

Respondent, a patent attorney, was reprimanded in 2002, on an earlier motion for reciprocal discipline, based on his three-month suspension in Massachusetts for failure to comply with orders of a Vermont family court in his own divorce matter. In re Kersey, 170 N.J. 409 (2002). Specifically, in 2001, respondent had received a three-month suspension in New Hampshire for contempt of court in Vermont for failure to comply with orders requiring him to provide his wife with financial records and to transfer ownership of certain stocks.

In reciprocal disciplinary proceedings in Massachusetts and the District of Columbia, the courts also imposed three-month suspensions. In addition, the Massachusetts disciplinary authorities required respondent to purge himself of the contempt charges in Vermont, before filing a petition for reinstatement. The District of Columbia conditioned respondent's reinstatement on his providing proof of fitness to practice. New York imposed a public censure and, as noted above, our Supreme Court determined

that a reprimand was sufficient discipline for respondent's misconduct.

The September 20, 2001 New Hampshire order suspending respondent for three months also appointed an attorney/trustee to take possession of respondent's client files and trust accounts on or before October 20, 2001. The New Hampshire Supreme Court found that respondent violated its order because he continued to practice law after the effective date of the suspension and did not allow the trustee to take possession of his files.

On December 19, 2001, the New Hampshire Supreme Court referred these new violations to a referee for a hearing, findings of fact, and rulings of law. A hearing was scheduled for January 4, 2002, at which respondent was ordered to bring all files "relating to cases or matters in which he performed work for clients since September 20, 2001 . . . all files relating to cases or matters in which he [was currently performing work] for clients," and "all files for cases pending in state or federal courts in which he [had] filed an appearance." Respondent violated the order by failing to produce the files.

On January 10, 2002, the New Hampshire referee found respondent in contempt, recommended his disbarment, and referred the matter to the Professional Conduct Committee for proceedings on the appropriate sanction for respondent's conduct. In

September 2002, the New Hampshire Committee on Professional Conduct petitioned that state's Supreme Court for an order disbaring respondent for his violations of RPC 3.4(c) for failing to turn over his files to the trustee, and RPC 5.5(a) for continuing to practice law after his suspension. Specifically, the New Hampshire committee charged that respondent had filed pleadings before a court, in an unrelated matter, and had also been involved in cases in New Hampshire federal court while suspended.

On February 27, 2004, the New Hampshire Supreme Court determined to disbar respondent¹. The Court stated:

The respondent was originally subject to disciplinary action because he was held in contempt of court in Vermont. He was later found to be in contempt of this court for twice violating orders requiring him to turn over client files and for practicing law after being suspended. Id. In sum, the respondent was in contempt of court in his disciplinary case, which itself was based on contempt findings. The referee found, and we agree, that the respondent's conduct 'is reflective not only of his contempt for the court issuing such orders but for the entire

¹ In New Hampshire, a disbarred attorney may seek reinstatement to practice law after two years, "after having complied with the terms and conditions set forth in the disbarment order promulgated by the court which shall include all requirements applicable to applications for admission to the bar, including passing the bar examination and a favorable report by the professional conduct committee and the character and fitness committee. N.H.R.S.Ct. Rule 37(2)(d); OAEb3, citing In re Budnitz' Case, 139 N.H. 489, 658 (1995).

judicial system as a whole. Such conduct cannot be overlooked or treated in any manner other than . . . [by] disbarment from the practice of law.' Accordingly, the respondent is hereby disbarred

[OAEaEx.J at 3.]²

Massachusetts also disbarred respondent based on the New Hampshire action³. Likewise, the District of Columbia Court of Appeals recommended that respondent be disbarred but, as of the date of the OAE's motion, a final decision had not yet been issued.

The OAE argued that "respondent's situation does not appear as egregious as in the cases calling for suspension," and that respondent's conduct was distinguishable from New Jersey cases dealing with contempt and practicing while suspended. The OAE remarked that respondent eventually turned over the relevant files to the New Hampshire Supreme Court. As to respondent's practicing while suspended, the OAE argued that the record did not show that he had deceived any client with regard to his status, or that any client had suffered as a result of his actions. The OAE noted respondent's assertion that, in the state

² OAEa refers to the OAE's appendix to its brief.
OAEb refers to the OAE's brief.

³ Respondent's appeal from the judgment of a single justice disbaring him from the Commonwealth of Massachusetts was affirmed on April 21, 2005. In Massachusetts a disbarred attorney may seek reinstatement after at least the passage of five years. OAEb3 (OAEb refers to the OAE's brief).

case in which he had filed pleadings while suspended, he was defending against an attorney's fee awarded against him personally and, therefore, acting as the real party in interest. The OAE conceded, however, that the New Hampshire Supreme Court had rejected respondent's argument in this regard.

The New Hampshire Referee's Findings and Recommendations addressed respondent's contention that he was representing himself as well as respondent's belief that the two cases pending in New Hampshire federal court were not affected by the court order. As to the federal cases, the referee pointed to the language of Local Rule 83.2(a) of the District Court of New Hampshire, which provides:

An attorney who is in good standing as a member of the bar in every jurisdiction in which admitted to practice, who is not subject to pending disciplinary proceedings as a member of the bar in any jurisdiction, and who is a member of the bar of any United States District Court, may appear and practice in this court as an attorney. . . .

[OAEbEx.G4].

The referee concluded that the September 2001 order subjecting respondent to discipline prohibited him from appearing and practicing in the United States District Court for the District of New Hampshire.

In the state case, the referee found that respondent had filed an appeal "in his capacity as his clients' attorney, not on

his own behalf. Moreover, the order appealed from was entered in the litigation in which the respondent appeared as counsel for his clients, not his own behalf."

The OAE took the position that a reprimand is sufficient discipline for respondent's conduct, as it will preserve public confidence in the bar without imposing unnecessary hardship on respondent. Also, the OAE noted that suspending respondent until he is readmitted in New Hampshire, will not further the public interest.

Upon a de novo 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 New Hampshire, with the exception noted below.

Reciprocal disciplinary proceedings in New Jersey are governed by R. 1:20-14(a)(4), which states that

[t]he 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 misconduct established warrants substantially different discipline.

The OAE correctly reasoned that a review of the record did not reveal any conditions that would fall within the scope of subparagraphs (A) through (D). The OAE argued that respondent's misconduct warrants substantially different discipline under subparagraph (E). We agree.

We do not find that respondent was representing clients in the state court case, but was merely defending himself against a counsel fee award entered against him; more simply stated, respondent was acting pro se. Respondent had filed a notice of appeal with the New Hampshire Supreme Court in a case that had been dismissed by the lower court for lack of jurisdiction. The notice of appeal related to a fee award entered against him personally. The referee's remark that the order from which respondent appealed had been entered in the litigation in which respondent represented a client is not a proper basis for a conclusion that respondent was representing clients, not himself.

The order was entered in the lawsuit in which respondent appeared as counsel, as any order for a counsel fee award would be. The appeal, however, related solely to the personal award against respondent.

As to respondent's appearance in federal court, there is no federal court order in the record showing that respondent was prohibited from practicing law in the New Hampshire district courts at that time, or that he was aware of such a prohibition. Thus, there is no clear and convincing evidence that respondent was barred from practicing law in federal court at the time. Respondent, therefore, might have had a reasonable belief that he could proceed in those matters, since no comparable federal court action had been taken.⁴

As to respondent's violation of the New Hampshire court order, although this is the second time that he is disciplined for violating court orders, we were persuaded by the OAE's and respondent's arguments. We find that respondent purged the contempt order against him by turning over his files as directed by the New Hampshire court and, furthermore, that his conduct

⁴ The New Jersey district courts deem an attorney ineligible to practice law in federal district court if the New Jersey Supreme Court has entered an order rendering that attorney ineligible. U.S. Dist. Ct. Rules D.N.J. Civ. R. 101.1. However, no equivalent rule was found in New Hampshire.

arose from the same set of circumstances that gave rise to his 2002 reprimand.

As the OAE noted, all of respondent's troubles with various disciplinary authorities stem from his initial contempt in Vermont; "Respondent has not engaged in a pattern of unethical behavior, but has allowed his stubborn insistence on his version of events to snowball into serious ethics consequences."

Generally, the discipline imposed on attorneys who have failed to comply with court orders has been a reprimand. See In re Skripek, 156 N.J. 399 (1998) (reprimand where attorney was held in contempt for failing to pay court-ordered spousal support and for failing to appear at the hearing); In re Hartman, 142 N.J. 587 (1995) (reprimand where attorney repeatedly ignored court orders to pay opposing counsel a fee, which resulted in a warrant for his arrest); and In re Haft, 98 N.J. 1 (1984) (reprimand where attorney failed to file a brief for a death row client, after the court held him in contempt three times for failing to do so). In fact, this respondent, too, received a reprimand for his failure to comply with court orders in his own divorce matter. In re Kersey, 170 N.J. 409 (2002).

Short suspensions have been imposed where an attorney has engaged in additional violations. See In re Jackson, 158 N.J. 154 (1999) (three-month suspension where attorney violated order

placing conditions on his bar admission to practice only with appropriate supervision; attorney also retained fees from two clients while employed by another law firm and misrepresented the status of those cases to the law firm); and In re Saavedra, 147 N.J. 269 (1997) (three-month suspension where attorney disregarded a court order to appear, resulting in the issuance of a warrant for his arrest; he also grossly neglected two client matters and failed to return an unearned retainer; attorney had a prior private reprimand and a reprimand).

Because we conclude that respondent's conduct was directly related to his prior ethics problems, we find that a reprimand is sufficient discipline for his failure to produce his files to the New Hampshire attorney-trustee.

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 E. Kersey
Docket No. DRB 05-019

Argued: April 21, 2005

Decided: July 7, 2005

Disposition: Reprimand

Members	Disbar	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