

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 15-119
District Docket No. XIV-2014-0284E

IN THE MATTER OF
DUANE T. PHILLIPS
AN ATTORNEY AT LAW

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Decision

Argued: June 18, 2015

Decided: November 17, 2015

Hoechin Kim 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 disciplinary stipulation between the Office of Attorney Ethics (OAE) and respondent. Respondent stipulated to having violated RPC 5.5(a) (practicing law while suspended), RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation), and R. 1:20-20(b) (filing an affidavit of compliance that failed to list the name of a client). The OAE recommended the imposition of a one-year suspension. We agree with that recommendation.

Respondent was admitted to the New Jersey bar in 1993. He has a significant disciplinary history.

In 2010, respondent was admonished for representing a client in her Nevada divorce proceedings, even though he was not licensed to practice law in that state, thereby violating RPC 5.5(a)(1) (unauthorized practice of law).

In 2011, respondent was censured in two consolidated defaults, involving two client matters, for lack of diligence in pursuing a consumer fraud action against a business school, failure to communicate with the clients, misrepresentations to them that their case was progressing even though he had not filed a complaint, and failure to cooperate with the ethics investigation. In re Phillips, 208 N.J. 205 (2011).

In 2013, respondent received another censure in another default. As in the prior ethics matters, he lacked diligence in pursuing an action against the same business school; failed to adequately communicate with the client; misrepresented to her that he had filed an amended complaint and that the case was progressing; and failed to cooperate with the ethics investigation. In re Phillips, 213 N.J. 83 (2013). We determined that respondent's disciplinary history, pattern of unethical conduct and continuing failure to cooperate with disciplinary authorities warranted another censure even though the matter

occurred during the same time frame as the matter that led to his first censure.

Respondent was temporarily suspended on January 23, 2012, for failure to pay administrative costs and expenses in connection with a disciplinary proceeding. In re Phillips, 208 N.J. 543 (2011). He was reinstated on May 17, 2012.

By Order dated February 12, 2014, effective March 11, 2014, respondent was suspended for three months in two consolidated default matters. He practiced law while suspended, failed to prepare a Qualified Domestic Relations Order (QDRO) in the client's divorce case, failed to reply to the client's numerous requests about the status of the QDRO over a ten-month period, and failed to cooperate with disciplinary authorities. There was no clear and convincing evidence that respondent was aware of his suspension when he practiced law. However, the discipline was increased based on respondent's "serial defaults," and failure to learn from prior mistakes. In re Phillips, 216 N.J. 584 (2014). Although respondent's suspension was effective March 11, 2014, he has not applied for reinstatement and remains suspended to date.

Respondent represented Louisemary Andreaci in a matrimonial matter against Christopher Andreaci. A motion in that matter had a return date of May 30, 2014. By letter dated May 14, 2014,

without explanation, Christopher requested that the motion be rescheduled to June 13, 2014.¹

After looking into the matter at the request of the Honorable Noah Bronkesh, J.S.C., the judge's law clerk determined that respondent had requested Christopher's consent to an adjournment. Christopher had consented, on the condition that the hearing be rescheduled to June 13, 2014. Christopher "stated," presumably to the clerk, that respondent had typed the letter requesting the adjournment and instructed Christopher to sign it and to submit it to the court. Judge Bronkesh, who referred this matter to the OAE, heard the motion on June 13, 2014, three months after respondent's March 11, 2014 suspension.

At the motion hearing, under oath, Louisemary stated (1) that she had not been aware of respondent's suspension; (2) that respondent had delivered "paperwork" to her at the courthouse prior to the motion hearing; and (3) that even though she had filed her cross-motion as a pro se, "respondent had provided substantial amounts of information and had prepared the cross-motion for her."

The stipulation provided that, upon "a request for an explanation to the judge's referral, by Certification received

¹ Because Christopher and Louisemary have the same surname, we refer to them by their first names for the sake of clarity.

on June 30, 2014, respondent acknowledged that he assisted Louisemary with the adjournment and her cross-motion."

Respondent "stated that both Christopher and Louisemary dropped off or picked up papers at his law office, including after the date of his suspension." He "maintained, however, that he did not provide legal advice but 'performed secretarial duties.'"

The Court's Order of suspension required respondent to file his affidavit with the OAE within thirty days pursuant to R. 1:20-20(b)(15). Respondent filed the affidavit on June 20, 2014, but failed to disclose that he represented Andreaci. Respondent further failed to inform her that his license had been suspended.

According to the stipulation, respondent, therefore, violated RPC 5.5(a), RPC 8.4(c), and R. 1:20-20(b) because he failed to list Andreaci as his client in his R. 1:20-20 affidavit. The stipulation did not list any mitigating or aggravating factors.

The OAE recommended a one-year suspension, relying on In re Bowman, 187 N.J. 84 (2006) (during a three-month suspension, the attorney maintained a law office, met clients and represented them in court; extensive mitigation considered); and In re Marra, 170 N.J. 411 (2002) (while suspended, the attorney

practiced law in two client matters and was guilty of recordkeeping deficiencies, despite a prior random audit).

Following a review of the stipulation, we are satisfied that respondent's conduct was unethical.

Notwithstanding that respondent claimed that he engaged only in "secretarial duties," he stipulated to having violated RPC 5.5(a). During his suspension, respondent (1) obtained Christopher's consent to an adjournment of a motion scheduled to be heard while his suspension was still in effect (the motion was rescheduled to June 13, 2014, which was three months after the effective date of his suspension); (2) typed the letter requesting the adjournment; (3) had Christopher sign the letter-request; (4) instructed Christopher to file the request; (5) delivered "paperwork" to Louisemary at the courthouse prior to the hearing; (6) prepared Louisemary's cross-motion; (7) provided "substantial amounts of information" to Louisemary; (8) in a certification to the court, "acknowledged assisting Louisemary with the adjournment and her cross-motion;" and (9) "stated that both Christopher and Louisemary dropped off or picked up papers at his law office, including after his date of suspension." Regardless of respondent's characterization of the tasks he performed, he clearly practiced law while suspended.

Respondent is also guilty of having violated both RPC 8.4(c) and R. 1:20-20(b). R. 1:20-20(b) requires a suspended attorney to file with the OAE director, within thirty days after the order of suspension,

a detailed affidavit specifying by correlatively numbered paragraphs how the disciplined attorney has complied with each of the provisions of this rule and the Supreme Court's order. . . . The affidavit shall be accompanied by a copy of all correspondence sent pursuant to this rule² . . . and an alphabetical list of names, addresses, telephone numbers, and file numbers of all clients whom the attorney represented on the date of discipline.

According to the stipulation, respondent failed to list Andreaci as his client, thereby failing to disclose that he represented her and that he had failed to notify her that he had been suspended.

We now turn to the issue of discipline for respondent's misconduct. The level of discipline for practicing law while suspended ranges from a lengthy suspension to disbarment, depending on the presence of other misconduct, the attorney's disciplinary history, and aggravating or mitigating factors. See, e.g., In re Brady, 220 N.J. 212 (2015) (one-year

² R. 1:20-20(b)(10) requires, among other things, that suspended attorneys promptly notify all clients in pending matters of the suspension and of their inability to act as an attorney due to the suspension.

retroactive suspension imposed on attorney who, after a Superior Court judge had restrained him from practicing law, represented two clients in municipal court and appeared in a municipal court on behalf of a third client, after the Supreme Court had temporarily suspended him; the attorney also failed to file an R. 1:20-20 affidavit following his temporary suspension; significant mitigating factors considered, including the attorney's diagnosis of a catastrophic illness and other circumstances that led to the dissolution of his marriage, the loss of his business, and the ultimate collapse of his personal life, including becoming homeless, and, in at least one of the instances of his practicing while suspended, his desperate need to provide some financial support for himself; prior three-month suspension); In re Bowman, supra, 187 N.J. 84 (one-year suspension for attorney who, during a period of suspension, maintained a law office where he met with clients, represented clients in court, and acted as Planning Board solicitor for two municipalities; prior three-month suspension; extremely compelling circumstances considered in mitigation); In re Marra, supra, 170 N.J. 411 (Marra I) (one-year retroactive suspension for practicing law in two cases while suspended and for substantial recordkeeping violations, despite the attorney's having previously been the subject of a random audit; on the

same day that Marra received the one-year suspension, he received a six-month suspension and a three-month suspension for separate violations, and previously received a private reprimand, a reprimand, and a three-month suspension); In re Lisa, 158 N.J. 5 (1999) (one-year suspension for attorney who appeared before a New York court during his New Jersey suspension; in imposing only a one-year suspension, the Court considered a serious childhood incident that made the attorney anxious about offending other people or refusing their requests; out of fear of offending a close friend, he agreed to assist as "second chair" in the New York criminal proceeding; there was no venality or personal gain involved; the attorney did not charge his friend for the representation; prior admonition and three-month suspension); In re Hollis, 154 N.J. 12 (1998) (one-year suspension in a default matter for attorney who continued to represent a client during his period of suspension; the attorney had been suspended for three years on two occasions); In re Wheeler, 140 N.J. 321 (1995) (two-year suspension imposed on attorney who practiced law while serving a temporary suspension for failure to refund a fee to a client; the attorney also made multiple misrepresentations to clients, displayed gross neglect and pattern of neglect, engaged in negligent misappropriation and in a conflict of interest situation, and failed to cooperate

with disciplinary authorities)³; In re Marra, 183 N.J. 260 (2005) (Marra II) (three-year suspension for attorney found guilty of practicing law while suspended in three matters; the attorney also filed an affidavit with the Court falsely stating that he had refrained from practicing law during a prior suspension; the attorney had received a private reprimand, a reprimand, two three-month suspensions, a six-month suspension, and a one-year suspension also for practicing law while suspended); In re Cubberley, 178 N.J. 101 (2003) (three-year suspension for attorney who solicited and continued to accept fees from a client after he had been suspended, misrepresented to the client that his disciplinary problems would be resolved within one month, failed to notify the client or the courts of his suspension, failed to file the affidavit of compliance required by R. 1:20-20(a), and failed to reply to the OAE's requests for information; the attorney had an extensive disciplinary history: an admonition, two reprimands, a three-month suspension, and two six-month suspensions); In re Wheeler, 163 N.J. 64 (2000) (three-year retroactive suspension for handling three matters without

³ In that same order, the Court imposed a retroactive one-year suspension on the attorney, on a motion for reciprocal discipline, for his retention of unearned retainers, lack of diligence, failure to communicate with clients, and misrepresentations.

compensation, with the knowledge that he was suspended, holding himself out as an attorney, and failing to comply with Administrative Guideline No. 23 (now R. 1:20-20) relating to suspended attorneys; prior one-year suspension on a motion for reciprocal discipline and, on that same date, two-year consecutive suspension for practicing while suspended); In re Kasdan, 132 N.J. 99 (1993) (three-year suspension for attorney who continued to practice law after being suspended and after the Court expressly denied her request for a stay of her suspension; she also failed to inform her clients, her adversary and the courts of her suspension, deliberately continued to practice law, misrepresented her status as an attorney to adversaries and to courts where she appeared, failed to keep complete trust records, and failed to advise her adversary of the whereabouts and amount of escrow funds; prior three-month suspension); In re Beltre, 130 N.J. 437 (1992) (three-year suspension for attorney who appeared in court after having been suspended, misrepresented his status to the judge, failed to carry out his responsibilities as an escrow agent, lied to the Board about maintaining a bona fide office, and failed to cooperate with an ethics investigation; prior three-month suspension); In re Walsh, Jr., 202 N.J. 134 (2010) (attorney disbarred on a certified record for practicing law while

suspended by attending a case conference and negotiating a consent order on behalf of five clients and making a court appearance on behalf of seven clients; the attorney was also guilty of gross neglect, lack of diligence, failure to communicate with a client, and failure to cooperate with disciplinary authorities; the attorney failed to appear on an order to show cause before the Court; extensive disciplinary history: reprimanded in 2006, censured in 2007, and suspended twice in 2008); In re Olitsky, 174 N.J. 352 (2002) (attorney disbarred for agreeing to represent four clients in bankruptcy cases after he was suspended, failing to advise them that he was suspended from practice, charging clients for the prohibited representation, signing another attorney's name on the petitions without that attorney's consent and then filing the petitions with the bankruptcy court; in another matter, the attorney agreed to represent a client in a mortgage foreclosure after he was suspended, accepted a fee, and took no action on the client's behalf; in yet another matter, the attorney continued to represent a client in a criminal matter after the attorney's suspension; the attorney also made misrepresentations to a court and was convicted of stalking a woman with whom he had had a romantic relationship; prior private reprimand, admonition, two three-month suspensions, and two six-month suspensions); and 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 us that he limit his practice to criminal matters).

This case is most comparable to the Brady matter (one-year suspension), notwithstanding respondent's more extensive ethics history (2010 admonition, 2011 censure, 2013 censure, 2014 three-month suspension). Respondent's conduct is not as serious as that in the cases where longer suspensions were imposed. For example, Wheeler (two-year suspension) was guilty of violations beyond practicing while suspended, including failure to refund a fee to a client. Wheeler further failed to cooperate with disciplinary authorities. Marra (three-year suspension) had an egregious ethics history and filed an affidavit with the court falsely stating that he had refrained from practicing law during a prior suspension. Cubberly (three-year suspension), too, had a far more egregious ethics history and made misrepresentations to his client. Finally, Olitsky (disbarred) represented four bankruptcy clients after his suspension, forged another attorney's name on the bankruptcy petitions, and was guilty of other ethics violations in two additional matters. He also made

misrepresentations to a court and was convicted of stalking. He, too, had an extensive disciplinary record.

We considered that this is not the first time respondent has been found guilty of having violated RPC 5.5(a). In his first matter, he practiced law in a jurisdiction where he was not admitted. The second time, respondent practiced law for three months while temporarily suspended for failure to pay the disciplinary costs assessed against him in the first ethics matter. In that matter, however, he did not knowingly practice law while suspended. Here, he was well aware of his suspension and of the prohibition against practicing law during that term. Our decision was issued on November 7, 2013. The Court issued its order suspending respondent effective March 11, 2014. He assisted Louisemary in June 2014. Clearly, respondent's conduct shows an indifference, nay contempt, to his ethics obligations. Based on the totality of the factors here, we find that a one-year suspension is warranted.

Member Gallipoli voted for disbarment finding that respondent's conduct evinces a disdain for the disciplinary system. Member Rivera 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
Bonnie C. Frost, Chair

By: Ellen A. Brodsky
Ellen A. Brodsky
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD


In the Matter of Duane T. Phillips
Docket No. DRB 15-119

Argued: June 18, 2015

Decided: November 17, 2015

Disposition: One-year suspension

Members	Disbar	One-year Suspension	Reprimand	Disqualified	Did not participate
Frost		X			
Baugh		X			
Clark		X			
Gallipoli	X				
Hoberman		X			
Rivera					X
Singer		X			
Zmirich		X			
Total:	1	6			1



Ellen A. Brodsky
Chief Counsel