

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 00-385

IN THE MATTER OF :
JAMES J. GILLESPIE, JR. :
AN ATTORNEY AT LAW :

Decision

Argued: February 8, 2001

Decided: July 29, 2001

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 based on a motion for reciprocal discipline filed by the Office of Attorney Ethics (“OAE”), predicated upon an April 10, 2000 order by the Supreme Court of Pennsylvania to disbar respondent.

Respondent was admitted to the New Jersey bar in 1982. He failed to notify the OAE of his Pennsylvania disbarment, as required under R.1:20-14 (a) (1). The OAE discovered

the disbarment during a routine search of Pennsylvania Supreme Court orders contained in the Pennsylvania Lawyer. Exhibit B.

Respondent's disbarment was based on facts that respondent admitted in his Resignation Statement, prepared in connection with the Pennsylvania disciplinary proceedings, as follows:

1. Prior to on or about July 24, 1998, you were employed by the T.I.G. Insurance Company Staff Counsel Program as a member of the firm of Stolarski, Gillespie & O'Neill.
2. Beginning in or about March of 1998, you assumed responsibility for the representation of Hawthorne Farms Inc., TCBY Yogurt and TCBY Yogurt of Willow Grove (hereinafter 'Hawthorne') as a defendant in a matter captioned Yollin v. TCBY of Langhorne, Inc., Montgomery County Court of Common Pleas, No. 95-18322 (hereinafter 'the Yollin Matter').
3. Prior to on or about July 24, 1998, you drafted or caused to be drafted an Order granting summary judgment on behalf of Hawthorne in the Yollin matter (hereinafter "the Yollin matter").
4. On or about July 24, 1998, you signed the Order with the name of the Honorable Albert R. Subers, Judge, Court of Common Pleas of Montgomery County, Thirty-eighth Judicial District (hereinafter 'Judge Subers').
5. At no time between on or about July 24, 1998 and the present were you authorized to draft an order granting summary judgment.
6. Between on or about July 24, 1998 and the present, you were never authorized to sign Judge Suber's name to the Order granting summary judgment.
7. By letter dated August 19, 1998, you provided a copy of the Order to Mr. Bill Martincic, IRISC, Inc., (hereinafter Mr. Martincic).

8. By providing the Order to Mr. Martincic you represented that it was a true, correct and valid Order issued by the court in the Yollin matter.

9. Your representations to Mr. Martincic that the Order was authentic were false and you knew them to be false when made because: a) you had created the document on or about July 24; and b) you had signed Judge Suber's name to that document.

Respondent was disbarred in Pennsylvania for his misconduct. The OAE seeks a three-year suspension.

* * *

Upon review of the full record, we determined to grant the OAE's motion. We adopted the findings of the Supreme Court of Pennsylvania that respondent was guilty of violating RPC 8.4 (c) (fraud) and RPC 8.4 (d) (conduct prejudicial to the administration of justice). In re Tumini, 95 N.J. 18, 21 (1979); and In re Kauffman, 81 N.J. 300, 302 (1979).

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

. . . The Board shall recommend imposition of the identical action or discipline unless the Respondent demonstrates, or the Board finds on the face of the record upon 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 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.

A review of the record does not reveal any conditions that would fall within the ambit of subparagraphs (A) through (D). However, as the OAE stated with regard to paragraph (E), a disbarred Pennsylvania attorney may apply for reinstatement five years after the effective date of the disbarment. See P.R.D.E. Rule 218 (b). See also In re Pavilonis, 98 N.J. 36 (1984). Therefore, the OAE also argued that under New Jersey case law, respondent's misconduct warrants a long term of suspension, not disbarment, which is permanent in New Jersey. The OAE recommended a three-year suspension. We, however, unanimously determined that a two-year suspension is sufficient discipline under the circumstances, including respondent's sixteen years at the bar without prior incident, his forthrightness when confronted in this matter and his apparent contrition for what appears to have been a single, aberrant act of dishonesty. See, e.g., In re Silberberg, 144 N.J. 215 (1996) (two-year suspension imposed where, at a real estate closing, the attorney witnessed and notarized the "signature" of a person whom respondent knew to be deceased and provided two false written statements to ethics authorities regarding the document).

Two members did not participate.

We also required respondent to reimburse the Disciplinary Oversight Committee for administrative expenses.

Dated: 7/29/01

BY: 
ROCKY L. PETERSON
Chair
Disciplinary Review Board