SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 15-275
District Docket No. XIV-2015-0229E

IN THE MATTER OF

JEFFREY K. MARTIN

AN ATTORNEY AT LAW

Decision

Argued: November 19, 2015

Decided: May 20, 2016

Steven J. Zweig 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), following an order from the Delaware Supreme Court suspending respondent for one year, effective November 18, 2014. The Delaware Supreme Court determined that respondent violated the equivalent of New Jersey RPC 3.4(c) (knowingly disobeying an obligation under the rules of a tribunal); RPC 5.3(a) (failure to supervise a nonlawyer assistant); R. 1:20-20(b)(13) and RPC

5.4(a) (paying or sharing fees with a suspended or disbarred attorney); RPC 5.5(a)(2) (assisting in the unauthorized practice of law); and RPC 8.4(d) (conduct prejudicial to the administration of justice). Respondent was also alleged to have violated the equivalent of New Jersey RPC 8.1(a) (knowingly making a false statement of material fact in connection with a disciplinary matter), but the Delaware Supreme Court properly dismissed that charge.

The OAE recommended a six-month suspension and, during oral argument, submitted that it had no objection to a retroactive suspension. Respondent agreed with the OAE's recommendation and requested that the suspension be retroactive to November 18, 2014, the effective date of his Delaware suspension.

For the reasons set forth below, we determine to impose a six-month prospective suspension.

Respondent was admitted to the New Jersey bar in 1981, the Pennsylvania bar in 1982, and the Delaware bar in 1985. He has no history of discipline in New Jersey, but, in June 2011, he received a public reprimand from the Delaware Supreme Court, along with a one-year period of public probation, for failing to implement recordkeeping practices he had agreed to implement in connection with a private admonition imposed, in 2009, for the same misconduct.

On November 18, 2014, the Delaware Supreme Court issued its opinion in this matter. We adopt the findings of fact made by the Delaware Supreme Court. Accordingly, for purposes of brevity and clarity, significant portions of the Delaware Supreme Court's opinion will be quoted below.

As noted above, respondent was admitted to the Delaware bar in 1985. For the first several years of his career, he was employed by a law firm that he left, in 1995, to start his own practice. As principal of that firm, respondent employed an associate, Herbert Feuerhake, from 1998 until 2001, when Feuerhake left to open his own practice. Respondent then joined the law firm of Margolis Edelstein, where he practiced from 2004 to 2007. In 2007, he left Margolis to form a law partnership, Martin & Wilson P.A., but left that firm, in early 2009, to, once again, start his own practice. Respondent's contact with the Delaware disciplinary system began that same year. As the Delaware Supreme Court detailed:

> [O]ne of Martin's employees contacted the Office of Disciplinary Counsel [the ODC, Delaware's equivalent of the OAE] to report that Martin had not been paying his taxes. An audit revealed that Martin's books and records did not comply with DLRPC Rule 1.15(b) and that he had failed to file or pay various taxes for certain time periods. As a result, Martin agreed to a private admonition with conditions in May 2009. During the same time period in 2009, Herb Feuerhake was also being investigated by the

> ODC for disciplinary violations. As a result of the ongoing ODC investigation against Feuerhake, Martin agreed to act as Feuerhake's practice monitor. As practice monitor, Martin discussed Feuerhake's active matters with him, including pending deadlines and statutes of limitations. Feuerhake moved his solo practice into Martin's office space. Martin and Feuerhake also worked as co-counsel on cases together, including representing the plaintiffs in two civil rights cases filed in the United States District Court for the District of Delaware [the Civil Rights Cases] . . . The cases were handled on a contingent fee basis. Martin and Feuerhake had a standing agreement that Martin would receive 60% of any fee and Feuerhake would receive 40%.
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> In November 2009, the ODC's investigation of Feuerhake led to the filing of a disciplinary complaint against him. Ultimately, on July 13, 2010, [the Delaware Supreme Court] suspended Feuerhake from practicing law for a period of two years. Among the conditions of Feuerhake's suspension was a prohibition against performing, directly or indirectly, any act that constituted the practice of law, including sharing or receiving legal fees (except fees earned before July 13, 2010). The Court also expressly prohibited Feuerhake from having contact with clients (or prospective clients) and witnesses (or prospective witnesses) when acting as a paralegal or legal assistant under the supervision of another Delaware lawyer.

Upon his suspension, Feuerhake began working for respondent as a paralegal, which is permitted under Delaware ethics regulations. Shortly after Feuerhake was suspended, respondent received his second disciplinary sanction, a public reprimand,

along with a one-year period of public probation, for failing to correct persistent recordkeeping infractions identified in connection with his 2009 private admonition. Respondent's period of probation ended on June 22, 2012. That same summer, the Delaware Lawyers Assistance Program requested that respondent offer another suspended attorney, Ron Poliquin, employment as a paralegal. Respondent initially declined the request, but, after speaking with Poliquin's counsel, ultimately reconsidered. Poliquin, too, began working for respondent.

Feuerhake's continuing employment at respondent's firm, purportedly as a paralegal after his suspension had been imposed, formed the basis for respondent's misconduct under scrutiny in this matter. As the Delaware Supreme Court recounted:

> After this Court suspended Feuerhake in July 2009 and during the period while Martin himself was on disciplinary probation, Feuerhake continued to work in Martin's law office as a paralegal. Martin testified that, although he knew Feuerhake was suspended, he never read the Court's suspension order. The record reflects that Feuerhake researched and drafted briefs in several of Martin's employment cases. For those cases, Feuerhake would submit an invoice, and Martin would pay him an hourly rate as a paralegal. Feuerhake also continued to work as a paralegal on the [Civil Rights Cases], which he and Martin had been co-counsel on prior to his suspension. For those two matters, Feuerhake did not receive compensation on an hourly

> basis. According to an email Feuerhake sent to Martin in September 2011, the two men were continuing, with respect to those two cases, to operate in accordance with the fee agreement they had reached when Feuerhake was licensed to practice law, namely that Martin would receive 60% of the fee and Feuerhake would receive 40%. For [one of the two Civil Rights Cases], the email reflected that [third-party attorney] David Facciolo would receive 20% of the fee because he had referred [that particular] matter to Feuerhake. Therefore, Martin's and Feuerhake's percentages were to be reduced to 48% and 32%, respectively [for that specific Civil Rights Case].

Feuerhake's role in the civil rights cases clearly violated the restrictions set forth in his own suspension order. The Delaware Supreme Court summarized:

> While suspended, Feuerhake met with [the plaintiff in one of the Civil Rights Cases] in Martin's office and in court. Feuerhake also exchanged emails with opposing counsel in that case. He attended a pretrial conference with Martin before a United States District Court judge. During the conference and at Martin's request, Feuerhake addressed the judge, distinguished case law, explained the relevance of anticipated trial testimony, lodged objections, and responded to opposing counsel's statements. When the litigation settled in April 2012, almost two years after Feuerhake's suspension, Martin gave Feuerhake $39,466, representing his full 32% share of the contingent fee under the agreement they had reached when Feuerhake was a licensed lawyer.
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> While suspended, Feuerhake also met and communicated with [the] plaintiff [in the other Civil Rights Case] up to twenty

> different times to discuss the contents of briefs he wrote and filings by opposing counsel. He attended four depositions in the case at which [the plaintiff] was present, and he communicated with four different witnesses being deposed.

In April 2014, the Delaware Supreme Court disbarred Feuerhake for engaging in the unauthorized practice of law. Based on the evidence gleaned during the investigation of Feuerhake's misconduct, the ODC filed the instant charges against respondent.

During the ODC hearing on the six-count formal ethics complaint, held before a panel of Delaware's Board on Professional Responsibility (the BPR panel), respondent denied almost all of the allegations levied against him. Although he conceded knowledge of Feuerhake's suspension, he claimed that he had not read the suspension order and, thus, had no knowledge of the explicit restrictions contained therein. Additionally, he denied that he had supervised Feuerhake during the period of his suspension and asserted that the fee paid to him was approved by a United States Magistrate, was paid on a quantum meruit basis for work that Feuerhake had performed prior to his suspension and, for those reasons, was permitted under the express language of the suspension order.

The BPR panel found that respondent had committed no violation of the equivalent of RPC 3.4(c), concluding that there

was insufficient evidence that respondent knew or should have known the conditions of Feuerhake's suspension order. Next, the panel found no violation of the equivalent of RPC 5.3(a), concluding that "[i]t can hardly be said that Mr. Feuerhake's unauthorized practice of law was a result of [respondent's] lack of supervision when it occurred in [respondent's] presence." Third, the panel found no violation of the equivalent of RPC 5.4(a), accepting the quantum meruit position respondent had advanced. The panel found that respondent had violated the equivalent of RPC 5.5(a), but only in one instance, when he had requested and received permission from the federal court for Feuerhake to argue, on the record, during a pretrial hearing for one of the civil rights cases. The panel concluded that the establishment of the violation of RPC 5.5(a) also established a violation of the equivalent of RPC 8.4(d). Finally, the BPR panel found no violation of the equivalent of RPC 8.1(a), concluding that respondent had made no false statement of material fact in connection with the disciplinary matter. Rather, the panel concluded that respondent had made a good faith distinction between supervising Feuerhake versus supervising Feuerhake's work.

Following a de novo review of the record, the Delaware Supreme Court rejected, almost entirely, the determinations made by the BPR panel, and made the following findings of fact:

> In this case, there is substantial evidence in the record to support a finding of Martin's knowing misconduct. First and foremost, Martin knew that Feuerhake was suspended, yet he willingly allowed Feuerhake to move into his office space and continue to work on cases for him as a paralegal without reading the Court's suspension order and determining the restrictions on Feuerhake's ability to work *for Martin* as a paralegal [emphasis in original]. A lawyer with Martin's experience, especially one with Martin's own recent disciplinary history, would have known that the Court's suspension order was publicly available and should have consulted it, which is precisely what Martin did when he was asked to hire another suspended lawyer, Ron Poliquin, to work for him as a paralegal.
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> Martin knew or intentionally remained ignorant of this Court's order suspending Feuerhake from practicing law. His admitted intentional ignorance of the Court's order should not absolve him of responsibility for complying with its terms . . .
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> The record supports a finding by clear and convincing evidence that Martin knew or should have known of the Court's order suspending Feuerhake. The record also establishes by clear and convincing evidence that Martin allowed Feuerhake to attend depositions, to talk to and meet with clients, and to appear before the District Court and allow him to argue case law. Accordingly, the record establishes that Martin knowingly violated: [the equivalent

of New Jersey RPC 3.4(c), RPC 5.5(a)(2), and RPC 8.4(d)].

> Furthermore . . . there is clear and convincing evidence that Martin failed to supervise Feuerhake adequately in his role as a paralegal. It is undisputed that Feuerhake worked in Martin's office, even if Feuerhake did not maintain regular office hours and was paid (when he was paid) as a subcontractor . . . Feuerhake's work was done on Martin's behalf in Martin's cases. Martin's contention that he only supervised Feuerhake's work but did not supervise Feuerhake is a distinction without a difference in this context.
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> In fact, to the extent Martin disclaims responsibility for supervising Feuerhake, he is admitting to a violation, because that means he was enabling Feuerhake to practice law in an unsupervised manner in violation of this Court's order. In other words, if Martin was not Feuerhake's supervisor, no one was. What is at issue is Feuerhake's work on cases where Martin was the counsel of record. Under the circumstances, because Martin knew or should have known of the terms of the Court's suspension order, the record supports a finding that Martin violated [the equivalent of New Jersey RPC 5.3(a)] by failing to supervise a nonlawyer assistant adequately.

Finally, the Delaware Supreme Court determined that respondent violated the New Jersey equivalent of R. 1:20-20(b)(13) and RPC 5.4(a). Rather than calculate an "appropriate division" for pre- and post-suspension work from the settlement, respondent and Feuerhake agreed that Feuerhake would take his full share of the contingent legal fee, as negotiated prior to

Feuerhake's suspension. During his own disciplinary matter, Feuerhake asserted pride in the legal work he had provided for his client, despite his suspended status, and unsuccessfully argued that a more accurate division of fees would have been too difficult to determine.

Having found respondent guilty of all charges against him except the equivalent of New Jersey RPC 8.1(a),[1] the Delaware Supreme Court imposed a one-year suspension on respondent. The Court found respondent's prior discipline and substantial legal experience to be aggravating factors. In mitigation, the Court considered respondent's cooperation with the disciplinary proceedings, his remorse, and the undisputed medical problems he had experienced during the relevant time frame.[2]

Although the ODC argued that respondent committed the misconduct for his pecuniary benefit and, accordingly, should be disbarred, the Delaware Supreme Court disagreed:

> But, in our view, the record does not support a finding that Martin's violations, although serious, were egregious enough to warrant disbarment. Nor do we believe there is clear and convincing evidence that Martin violated the rules with the intent to benefit himself. From all of the testimony

[1] The Delaware Supreme Court implicitly adopted the finding made by the BPR panel in respect of RPC 8.1(a), which the ODC had not appealed.

[2] The nature of respondent's medical problems was not detailed in the record.

> at the hearing, it appears that Martin's misconduct resulted from his intent to help a long-time friend and former colleague who had fallen on hard times. Although Martin did ultimately benefit from Feuerhake's unauthorized practice of law, there is insufficient evidence that Martin violated the rules with that intent.

As a result of the Delaware discipline, other jurisdictions commenced reciprocal discipline proceedings. On February 26 and April 14, 2015, the United States District Court for the District of Delaware and the United States Court of Appeals for the Third Circuit, respectively, imposed a four-month suspension, retroactive to November 18, 2014. Additionally, motions for reciprocal discipline against respondent are pending before the United States District Court for the Eastern District of Pennsylvania and the Supreme Court of Pennsylvania.

* * *

Following 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 we rest for purposes of disciplinary proceedings. Therefore, we adopt the Delaware Supreme Court's disciplinary findings and determine that respondent's conduct violated the following New Jersey

rules: RPC 3.4(c), RPC 5.3(a), R. 1:20-20(b)(13) and RPC 5.4(a), RPC 5.5(a)(2), and RPC 8.4(d).

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

> 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:
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> (A) the disciplinary or disability order of the foreign jurisdiction was not entered;
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> (B) the disciplinary or disability order of the foreign jurisdiction does not apply to the Respondent;
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> (C) the disciplinary or disability order of the foreign jurisdiction does not remain in full force and effect as the result of appellate proceedings;
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> (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
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> (E) the unethical conduct 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). With respect to subparagraph (E), however, a review of New Jersey case law reveals that attorneys guilty of misconduct similar to, or even worse than, that committed by respondent have received terms of suspension shorter than one year.

The touchstone of respondent's misconduct in this matter is his violation of RPC 5.5(a)(2). Although there are numerous cases in which attorneys have assisted nonlawyers in the unauthorized practice of law, there are relatively few in which lawyers have assisted suspended or disbarred lawyers. See, e.g., In re Ezon, 172 N.J. 235 (2002) (reprimand imposed on attorney for assisting a disbarred lawyer (his father) in the practice of law; by executing a stipulation, the attorney misled the court and other attorneys that, along with his father, he represented the client; in mitigation, we considered the fact that the disbarred lawyer that the attorney assisted was his father); In re Hancock, 221 N.J. 259 (2015) and In re Kronegold, 197 N.J. 22 (2008) (companion cases) (motions for reciprocal discipline; six-month suspensions for attorneys who assisted a disbarred attorney in the unauthorized practice of law; the clients "hired" the disbarred attorney, who paid Hancock and Kronegold to provide legal services; in one matter, Hancock appeared for oral argument, at the disbarred attorney's request, and made a misrepresentation to the court, claiming he was representing the client pro bono; the disbarred attorney then prepared and filed a brief with the appellate court, using Kronegold's name and purported signature; in another matter, Hancock failed to supervise the disbarred attorney, allowing him, as a "paralegal" in his firm, to conduct

bankruptcy proceedings under Hancock's name; Hancock also made misrepresentations to the bankruptcy court regarding the disbarred attorney's role in the proceedings; in mitigation, we considered the passage of time (ten to twelve years) since the misconduct and Hancock's unblemished disciplinary record since his 1979 admission; Kronegold signed a notice of appeal for the client, at the disbarred attorney's request; the disbarred attorney then prepared and filed a brief with the appellate court, using Kronegold's name and purported signature; Kronegold also failed to set forth in writing the rate or basis of his fee; prior reprimand); and In re Cermack, 174 N.J. 560 (2002) (attorney consented to a six-month suspension after he entered into an agreement to permit a suspended lawyer to continue to represent his own clients while the attorney was the named attorney of record and made court appearances; the attorney also displayed a lack of diligence, failed to keep clients reasonably informed about the status of their matters, failed to explain matters to the extent reasonably necessary to permit clients to make informed decisions, failed to comply with recordkeeping requirements, failed to protect his clients' interests on termination of the representation, knowingly assisted another to violate the Rules of Professional Conduct, and engaged in conduct prejudicial to the administration of justice; no prior discipline).

Here, respondent's misconduct is similar to that of the attorney in Cermack, who received a six-month suspension for assisting a suspended attorney in the unauthorized practice of law amounting to the continued representation of existing clients, while Cermack purported, for purposes of the courts, to be the attorney of record. Also, like Cermack, respondent committed additional ethics violations, including knowingly disobeying a court order, failing to supervise a nonlawyer employee, and sharing fees with a suspended attorney. Based on the facts of Hancock and Kronegold, however, respondent's additional ethics violations do not warrant harsher discipline than the six-month suspension levied on those attorneys. Hancock's and Kronegold's misconduct was more egregious than respondent's. They had made a business arrangement with a disbarred attorney, clearly for their pecuniary benefit, and committed additional serious misconduct, including making blatant misrepresentations to multiple courts to both perpetrate their scheme and to attempt to conceal their assistance of the disbarred attorney in his flagrant unauthorized practice of law.

In aggravation, as noted by the Delaware Supreme Court, respondent has previously been disciplined in Delaware, including the imposition of progressive discipline for his failure to learn from his past mistakes. Specifically, in 2011, respondent received a reprimand and a period of probation, which stemmed from his

failure to comply with conditions imposed as part of his 2009 admonition for the same misconduct, recordkeeping infractions.

In mitigation, the Delaware Supreme Court determined that respondent had no intent to benefit himself through his misconduct, showed remorse, and was experiencing medical issues during the relevant time frame. We also adopt these findings for consideration.

On balance, we determine a six-month prospective suspension to be the appropriate quantum of discipline in this matter. We specifically reject respondent's request that the suspension be retroactive to November 18, 2014. To impose such a retroactive suspension would amount to no meaningful sanction on respondent in his New Jersey practice for his misconduct.

Member Zmirich 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
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Jeffrey K. Martin
Docket No. DRB 15-275

Argued: November 19, 2015

Decided: May 20, 2016

Disposition: Six-month prospective suspension

Members	Disbar	Six-month Prospective Suspension	Reprimand	Dismiss	Disqualified	Did not participate
Frost		X				
Baugh		X				
Clark		X				
Gallipoli		X				
Hoberman		X				
Rivera		X				
Singer		X				
Zmirich						X
Total:		7				1

Ellen A. Brodsky
Chief Counsel