

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 98-175

IN THE MATTER OF :
BARBARA K. LEWINSON :
AN ATTORNEY AT LAW :

Decision

Argued: June 11, 1998

Decided: November 19, 1998

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

Carl D. Poplar appeared on behalf of respondent.

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

This matter was before the Board based on a motion for reciprocal discipline filed by the Office of Attorney Ethics ("OAE"), pursuant to R. 1:20-14, following respondent's disbarment

by consent from the bar of the Commonwealth of Pennsylvania.¹ In the documents that are part of that proceeding, respondent admitted that she represented a client in two criminal cases in Pennsylvania while ineligible to practice law due to her failure to comply with Pennsylvania's continuing legal education requirements ("CLE"). Respondent also admitted that she misrepresented her status to the Honorable Isaac S. Garb of the Bucks County Court of Common Pleas.

Respondent has been a member of the New Jersey bar since 1981. In 1992, she received a public reprimand for failure to maintain adequate attorney business records during 1984 and 1985.

The facts set forth below were taken from the statement of facts submitted with respondent's consent to disbarment in Pennsylvania. Respondent certified that the facts were true.

In 1994, the Pennsylvania Disciplinary Board transferred respondent to inactive status because she failed to comply with Pennsylvania's CLE requirements. In or about December 1996, respondent agreed to represent Andrew Anthony Higgins in two criminal matters. In one case, Higgins was charged with driving under the influence ("DUI"); in the other case, he was charged with vehicular homicide. Respondent received fees in advance for both cases. She did

¹ Although respondent's certification and the appended statement of facts were titled "resignation under Rule 215," the court order stated that respondent was "disbarred on consent."

not inform Higgins of her inactive status. Her intent was to ensure that she would collect a fee for her representation.

In the DUI case, respondent appeared in court with Higgins on three occasions: for a preliminary hearing on December 19, 1996, for his arraignment on January 17, 1997 and for his entry of a guilty plea on January 27, 1997.

In the vehicular homicide case, respondent spoke with a Bucks County assistant district attorney on or about November 27, 1996 and represented that she was counsel for Higgins. On January 8, 1997, respondent appeared with Higgins for the preliminary hearing and formally entered her appearance in the case on January 27, 1997. The trial was scheduled for May 1, 1997. During the trial call, Judge Garb asked respondent if she was admitted to practice law in Pennsylvania and respondent replied "absolutely." After the trial call, respondent went into Judge Garb's chambers, where she represented to him that she had voluntarily placed herself on inactive status. She also represented that she had taken all of the required CLE courses and been reinstated to the Pennsylvania bar.

On May 1, 1997, Judge Garb issued a Rule to Show Cause why respondent should not be found in contempt for appearing for trial in the homicide case when she was not eligible to practice in Pennsylvania. The contempt hearing was held on May 9, 1997. Judge Garb found that respondent had intentionally misled him regarding her status as an attorney in Pennsylvania and that she was guilty of a willful and deliberate act of contempt. He ordered her to pay a \$1,000 fine.

In her consent to disbarment, respondent admitted that she violated RPC 1.1 (neglect), RPC 1.4(a) (failure to keep a client reasonably informed about the status of a matter), RPC 1.4(b) (failure to explain a matter to the extent reasonably necessary to permit the client to make informed decisions), RPC 3.3(a)(1) (false statement of material fact or law to a tribunal), RPC 3.5(c) (conduct intended to disrupt a tribunal), RPC 4.1(a)(1) (false statement of material fact or law to a third person in the course of representing a client), RPC 5.5 (practicing law in a jurisdiction where doing so violates the regulation of the legal profession in that jurisdiction), RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation) and RPC 8.4(d) (conduct prejudicial to the administration of justice).

Respondent represented that her resignation had been “freely and voluntarily rendered,” that she had not been “subjected to coercion or duress” and that she was “fully aware of the implications of submitting this resignation.”

In the New Jersey proceeding, however, respondent argued that her statements to Judge Garb were not misrepresentations and that she believed that she was eligible to practice law in Pennsylvania in 1997. She stated that it was her understanding that, in order to be removed from inactive status, she merely had to submit an application, send her annual fee and take the CLE credits for 1997. In fact, respondent had to file a petition with the Supreme Court for an order of reinstatement and take CLE credits for all the years that she had been inactive.

According to respondent, her misunderstanding about the requirements for meeting the eligibility requirements in Pennsylvania stemmed from her belief that she had voluntarily

transferred to inactive status. Respondent pointed out that, as soon as Judge Garb brought her inactive status to her attention, she took the additional CLE courses and was reinstated to the practice of law in Pennsylvania on May 29, 1997.

Respondent claimed that she had agreed to the disbarment in order to avoid a hearing in Pennsylvania. According to respondent, her Pennsylvania counsel had advised her that a hearing would result in a notice being sent to New Jersey, along with a complete statement of the facts found by the Pennsylvania Disciplinary Review Board, and a recommendation that New Jersey take reciprocal action; on the other hand, her counsel had explained, if she voluntarily resigned from the Pennsylvania bar, New Jersey would be notified of a voluntary resignation, but no factual statement would be sent unless New Jersey specifically requested it.

Respondent contended that she was not interested in practicing in Pennsylvania and that her counsel had convinced her that the consent to disbarment would protect her New Jersey license.

In Pennsylvania, a disbarred attorney may seek reinstatement five years after the effective date of disbarment. The OAE urged the Board to suspend respondent for five years and not recommend her reinstatement in New Jersey until she is reinstated in Pennsylvania.

Respondent, in turn, argued that her conduct warranted a reprimand or, at most, a three-month suspension.

* * *

Upon a de novo review of the full record, the Board determined 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 a disciplinary proceeding), the Board adopted the findings of the Commonwealth of Pennsylvania.

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

Nothing in the record indicates any conditions that would fall within the ambit of subparagraphs (A) through (D). However, subparagraph (E) is applicable. Respondent's

misconduct in Pennsylvania does not warrant a five-year suspension in New Jersey.

Respondent admitted that she practiced law while on the ineligible list and misrepresented her eligibility status to a judge. Although respondent argued in this proceeding that she did not intentionally misrepresent her status to Judge Garb, she admitted to a knowing misrepresentation in her certification filed in the Pennsylvania disciplinary proceeding. This matter is before the Board on a motion for reciprocal discipline and, as set forth above, the “final adjudication” in Pennsylvania “shall establish conclusively the facts on which it rests” for purposes of this proceeding. R. 1:20-14(a)(5).

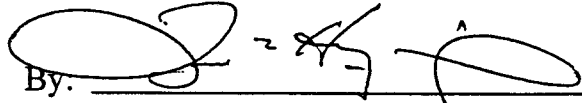
The level of discipline for practicing law while ineligible has generally ranged from a reprimand to a short suspension. See In re Strupp, 147 N.J. 267 (1997) (reprimand); In re Costanzo, 115 N.J. 428 (1989) (reprimand) and In re Beltre, 119 N.J. 190 (1990) (three-month suspension). Here, respondent also misrepresented her eligibility status to the court, took a fee from her client knowing that she was ineligible to practice in Pennsylvania and did not disclose to her client that she was unable to represent him.

In determining the appropriate discipline, the Board took into consideration respondent’s volunteer service on professional committees and the character reference letters that attested to her good reputation and dedication to her profession. Finally, the Board took into consideration the family problems that were affecting respondent in 1996. In light of the foregoing, the Board

determined to suspend respondent for six months. One member dissented, voting to suspend respondent for three years because of her misrepresentations to the court.

The Board also determined to require respondent to reimburse the Disciplinary Oversight Committee for administrative costs.

Dated: 11/19/98

By: 

LEE M. HYMERLING
Chair
Disciplinary Review Board

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Barbar K. Lewinson
Docket No. DRB 98-175

Argued: June 11, 1998

Decided: November 19, 1998

Disposition: Six-Month Suspension

Members	Disbar	Three-Year Suspension	Six-Month Suspension	Admonition	Dismiss	Disqualified	Did not Participate
Hymerling			x				
Zazzali							x
Brody			x				
Cole		x					
Lolla			x				
Maudsley			x				
Peterson			x				
Schwartz			x				
Thompson			x				
Total:		1	7				1

By Isabel Frank 11/20/98
Robyn M. Hill
Chief Counsel