SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 15-372
District Docket No. XIV-2013-0716E

IN THE MATTER OF	
RAYMOND S. NADEL	
AN ATTORNEY AT LAW	

Decision

Argued: February 18, 2016

Decided: August 3, 2016

Hillary K. Horton appeared on behalf of the Office of Attorney Ethics.

David H. Dugan III appeared on behalf of respondent.

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(a)(4), based on respondent's one-year suspension in Delaware for engaging in the unauthorized practice of law in that state, in violation of the Delaware Lawyers' Rules of Professional Conduct 5.5(b)(1) and 5.5(b)(2), which the OAE has equated to a violation of New Jersey's RPC 5.5(a)(1). We determine to impose a censure.

Respondent was admitted to the New Jersey and Pennsylvania bars in 1982. On February 26, 1997, he received a reprimand for a conflict of interest after representing both the driver and passenger for injuries sustained in a motor vehicle accident. In re Nadel, 147 N.J. 558 (1997).

On June 5, 2013, Delaware's Office of Disciplinary Counsel (ODC) filed a Petition for Discipline charging respondent with having engaged in the unauthorized practice of law, in violation of Delaware's RPC 5.5(b)(1) and (2). In an answer filed on June 24, 2013, respondent admitted to those violations.

Delaware RPC 5.5(b)(1) states that "[a] lawyer who is not admitted to practice in this jurisdiction shall not: (1) except as authorized by these Rules or other law, establish an office or other systemic and continuous presence in this jurisdiction for the practice of law." In his answer to the petition, respondent admitted that, by representing more than seventy-five Delaware residents in claims arising out of accidents that occurred in Delaware, and involving insurance policies issued to vehicles registered in Delaware, he had established a systemic and continuous legal presence in Delaware, in violation of the Rule.

Delaware RPC 5.5(b)(2) states, "[a] lawyer who is not admitted to practice in this jurisdiction shall not: (2) hold

out to the public or otherwise represent that the lawyer is admitted to practice law in this jurisdiction." In his answer, respondent admitted that he met Delaware clients in the office of an acquaintance, Dr. Morris Peterzell, in Wilmington, Delaware. There, respondent held out to the public that he was admitted to practice law in Delaware, a violation of the Rule.

On August 6, 2013, a panel of the Delaware Board of Professional Responsibility (DBPR) held a disciplinary hearing and, on June 10, 2013, issued a report, the facts of which were adopted by the Delaware Supreme Court and contained in that court's December 4, 2013 opinion, as follows.

From April 2009 through September 21, 2012, respondent engaged in the unauthorized practice of law in Delaware. Initially, Dr. Peterzell sought respondent's legal assistance for one of his patients, but respondent would ultimately meet with more than seventy-five such patients, about half of them in the doctor's office. They were all Delaware residents involved in auto accidents. The accidents occurred in Delaware and involved Delaware insurance policies, which were governed by Delaware law. In all of the cases, respondent attempted to settle the clients' insurance claims. If he was unable to settle a case, respondent would turn the matter over to a Delaware attorney to pursue litigation. These representations amounted to

about ten to fifteen percent of respondent's law practice at the time.

Respondent never filed a lawsuit in Delaware and neither advertised nor actively solicited clients in that State. Respondent never expressly told any of the clients nor represented to any court that he was a member of the Delaware bar. Nevertheless, respondent admitted that, by meeting with his Delaware clients in Delaware, he potentially created the impression that he was a licensed Delaware attorney. Finally, none of the clients were harmed by respondent's actions.

Although not a defense, respondent claimed to have been unaware of Delaware RPC 5.5 and believed that, as long as he handled only pre-litigation matters, he was not required to be a licensed Delaware attorney. In aggravation, the panel found that respondent's motive was dishonest or selfish; he engaged in a pattern of misconduct; and he had substantial experience in the practice of law. In mitigation, respondent had no ethics history in that State; made a timely, good faith effort to make restitution and to remedy his actions; fully disclosed his conduct to ethics authorities; and expressed remorse for his misconduct.

The panel recommended a one-year suspension with a prohibition against pro hac vice admission for three years,

which the Delaware Supreme Court adopted by order dated December 4, 2013.

Respondent timely reported his Delaware suspension to the OAE.

The OAE argues that a censure is the appropriate sanction for respondent's misconduct, relying on In re Kingsley, 204 N.J. 315 (2011) (censure in a reciprocal discipline matter for a violation of RPC 5.5(a)(1); the attorney, who was not licensed in Delaware, arranged with a Delaware accountant and non-lawyer, Ralph Estep, to prepare estate-planning documents for Delaware clients; the attorney input certain information provided by Estep and then returned the documents to Estep in about seventy-five matters; the attorney did not contact the clients thereafter to ensure that they approved of the changes he made).

Respondent's counsel urges the imposition of only a reprimand. First, he equates Delaware RPC 5.5(b)(2), which has no direct New Jersey counterpart, with our RPC 7.1(a), involving false or misleading statements to a client. Counsel argues that, "[a]bsent fraud . . . the standard New Jersey sanction for making false or misleading statements to a client is a reprimand. Michels, *New Jersey Attorney Ethics* Section 44:7 (Gann Law Books 2015); In re Bonanno, 135 N.J. 464 (1994); In

re Anis, 126 N.J. 448, cert. den. 504 U.S. 956 (1992); In re Salit, 95 N.J. 140 (1984); In re Caola, 117 N.J. 108 (1989)."

Next, counsel argues that reprimands ordinarily are imposed in matters involving the unauthorized practice of law in foreign jurisdictions, citing In re Bronson, 197 N.J. 17 (2008); In re Haberman, 170 N.J. 197 (2001); In re Benedetto, 167 N.J. 280 (2001); In re Auerbacher, 156 N.J. 552 (1999); and In re Pamm, 118 N.J. 556 (1990). Counsel further notes that, in "In re Pareti, DRB 09-028 (2009) the attorney received only an admonition."

Finally, counsel argues that this matter is distinguishable from Kingsley, a more serious case for which the attorney was disbarred in Delaware. When reviewing the matter on a motion for reciprocal discipline, we imposed a censure because Kingsley had assisted Estep in violating "a cease and desist order of Delaware's highest court. . . . Absent that, his sanction would have been only a reprimand."

Following a review of the 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 it rests for purposes of a disciplinary proceeding in this

state. We, therefore, adopt the findings of the Delaware Supreme Court finding respondent guilty of unethical conduct.

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

> [t]he 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;
>
> (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 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). Paragraph (E), however, applies, because respondent's unauthorized practice of law would not result in a one-year suspension in New Jersey, for the reasons discussed below.

Respondent met with clients, communicated with insurance carriers and attorneys, and negotiated settlements of clients' claims in about seventy-five matters in Delaware. In addition, respondent admitted that, by his actions, clients may have believed that he held a law license in that state. Respondent did not, however, affirmatively tell any clients that he was licensed in Delaware. As such, he was found guilty of violations of Delaware's RPC 5.5(b)(1) and RPC 5.5(b)(2).

Although the relevant Delaware RPCs do not have identical New Jersey counterparts, our RPC 5.5(a)(1) states that a lawyer shall not "practice law in a jurisdiction where doing so violates the regulation of the legal profession in that jurisdiction."

It is beyond question that respondent's Delaware violations involved the practice of law and "the regulation of the legal profession" for purposes of New Jersey's RPC 5.5(a)(1). In In re Jackman, 165 N.J. 580, 586 (2000), the Court determined that an attorney who was not admitted in New Jersey practiced law in this state, despite the fact that he was not engaged in litigation:

> As an associate at Sills Cummis, Jackman clearly was practicing law in New Jersey. He acknowledged this at the hearing and conceded the same before this Court. The

> fact that he may not have appeared in court, but worked on transactional matters, does not affect that conclusion. The practice of law in New Jersey is not limited to litigation. *State v. Rogers*, 308 N.J. Super. 59, 67-70, 705 A.2d 397 (App.Div.), *certif. denied*, 156 N.J. 385, 718 A.2d 1214 (1998). One is engaged in the practice of law whenever legal knowledge, training, skill, and ability are required. *Id.* at 66, 705 A.2d 397.

Here, respondent applied his legal knowledge, training, skill, and ability when he represented clients in personal injury cases in Delaware and dispensed legal advice to them in respect of settling their claims.

We, thus, find respondent guilty of a violation of RPC 5.5(a)(1). The only question remaining involves the appropriate sanction in New Jersey for such misconduct.[1]

The discipline imposed on attorneys who practice law in jurisdictions where they are not licensed has varied widely, from an admonition to a suspension, depending on the presence of other ethics infractions, the attorney's disciplinary history, and aggravating and mitigating factors. See, e.g., In the Matter of Mateo J. Perez, DRB 13-009 (June 19, 2013) (admonition for

[1] Counsel's argument that RPC 7.1, not RPC 5.5(a)(1), should govern this case is inapposite. RPC 5.5(a)(1) has consistently been applied in New Jersey discipline cases involving its attorneys who are found to have practiced law in jurisdictions where they are not licensed.

attorney who, although not admitted in New York, represented a client there; the attorney had represented several other clients in New York after having been admitted pro hac vice or having disclosed to the judges that he had not been admitted in New York; he thus believed that he could represent clients without admission; the clients were family and friends of the attorney and were not charged for the representation; mitigating factors included the absence of prior discipline and the lack of personal financial gain); In the Matter of Duane T. Phillips, DRB 09-402 (February 26, 2010) (admonition for attorney who was not admitted in Nevada but represented a client who was obtaining a divorce in that state; we considered, in mitigation, that the conduct involved only one client, that the attorney had no ethics history, and that a recurrence of the conduct was unlikely); In the Matter of Harold J. Pareti, supra, DRB 09-028 (June 25, 2009) (admonition for attorney who, for almost two years, held himself out as licensed to practice law in New Jersey, maintained a law office in Toms River, entered into a partnership with a New Jersey attorney, and performed numerous real estate closings; his actions were based on his mistaken belief that he had passed the New Jersey bar examination, a belief that was reinforced by his receipt of a letter asking for information to complete the bar admission process; mitigation included the attorney's lack of

intent to violate the RPCs and his unblemished thirty-six years as a member of the District of Columbia bar); In re Cellino, 217 N.J. 361 (2014) (reprimand for attorney who undertook the representation of a client in a divorce matter in Georgia, where he was not admitted to practice; the attorney's actions amounted to the unauthorized practice of law, a violation of RPC 5.5(a)(1); prior 2010 censure); In re Bronson, supra, 197 N.J. 17 (reprimand for attorney who practiced law in New York, where he was not admitted, failed to prepare a writing setting forth the basis or rate of his fee in a criminal matter, and failed to disclose to a New York court that he was not licensed there; the unauthorized practice lasted for roughly one year and involved one client); In re Haberman, supra, 170 N.J. 197 (reprimand for attorney who, on behalf of his New York/New Jersey law firm, appeared in court in New Jersey in 1996, where he was not admitted, and did not advise the court that he was not admitted to practice in New Jersey; the attorney also appeared as counsel at a deposition in 1997, taken in connection with a Superior Court matter; the attorney's pro hac vice privileges in New Jersey also were suspended for one year); In re Benedetto, supra, 167 N.J. 280 (reprimand for attorney who pleaded guilty to the unauthorized practice of law, a misdemeanor in South Carolina; the attorney had received several referrals of

personal injury cases and had represented clients in five to ten matters in the first half of 1997 in South Carolina, although he was not licensed in that jurisdiction; prior private reprimand for failure to maintain a bona fide office in New Jersey); In re Butler, 215 N.J. 302 (2013) (censure for attorney who, for more than two years, practiced with a law firm in Tennessee, although not admitted there; pursuant to an "of counsel" agreement, the attorney was to become a member of the Tennessee bar and the law firm was to pay the costs of her admission; the attorney provided no explanation for her failure to follow through with the requirement that she gain admission to the Tennessee bar; the attorney was suspended for sixty days in Tennessee, where the disciplinary authorities determined that her misconduct stemmed from a "dishonest or selfish motive"); In re Kingsley, supra, 204 N.J. 315 (attorney censured, based on discipline in the State of Delaware, for engaging in the unlawful practice of law by drafting estate planning documents for a public accountant's Delaware clients, many of whom he had never met, when he was not licensed to practice law in Delaware; the attorney also assisted the accountant in the unauthorized practice of law by preparing estate planning documents based solely on the accountant's notes and by failing to ensure that the documents complied with the clients' wishes); and In re

Lawrence, 170 N.J. 598 (2002) (in a default matter, attorney received a three-month suspension for practicing in New York, where she was not admitted to the bar; the attorney also agreed to file a motion in New York to reduce her client's restitution payments to the probation department, failed to keep the client reasonably informed about the status of the matter, exhibited a lack of diligence, charged an unreasonable fee, used misleading letterhead, and failed to cooperate with disciplinary authorities).

The admonition cases above, Perez, Phillips, and Pareti, all involved single-client violations. The reprimand cases, Bronson and Haberman, also involved single clients, while Benedetto involved five to ten matters.

This case is factually similar to the censure matter, Kingsley, above, with one caveat, below. Attorney Kingsley, like respondent, represented clients in Delaware. Like respondent, Kingsley was implicated in about seventy-five matters for which he was found guilty of violating that State's RPC 5.5(b)(2). In the Matter of Leonard W. Kingsley, DRB 10-056 (July 7, 2010) (slip op. at 15). Unlike respondent, who received a one-year suspension in Delaware, the Delaware Supreme Court

disbarred Kingsley.[2]

When determining the appropriate reciprocal discipline for Kingsley, we concluded that a reprimand would ordinarily have sufficed for Kingsley's misconduct, where he "simply drafted estate planning documents based on Estep's [the accountant's] notes and then failed to confirm with the clients that the documents complied with their wishes." Id. at 32. In that regard, we gave "great weight" to the finding of the Delaware Board that respondent's violations were negligent, not intentional. Id. 32-33. The Delaware Board had found that Kingsley's violations were not knowing because, at that time, the law (as to whether the drafting of estate planning documents to be reviewed by a Delaware lawyer constituted the practice of law) was unsettled. Id. at 13-14.

More serious, however, was Kingsley's continued preparation of documents for Estep, in four more matters, after the Delaware Supreme Court had issued a cease and desist order against Estep in the accountant's own unauthorized practice of law proceeding. Kingsley was aware of the order at the time. For that reason, we determined that a censure was warranted. Id. at 33.

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[2] An attorney disbarred in Delaware may apply for reinstatement after five years. Rule 22(c) of the Delaware Lawyers' Rules of Disciplinary Procedure.

Here, there is aggravation – respondent's prior reprimand – albeit remote in time (1997) and for unrelated misconduct (conflict of interest). Although respondent's prior ethics history is not as serious as the additional factor in Kingsley, ignoring a court order, there is still ample reason for us to impose a censure.

Unlike attorney Kingsley, whose actions were found to have been negligent, based on the uncertain state of the law at the time, there was no such uncertainty or flux in this case. Thus, respondent should have known that, even though he was not engaged in litigation, he was still practicing law when he dispensed legal advice to Delaware clients in the settlement of their personal injury matters there. In re Jackman, supra, 165 N.J. 580, 586. Moreover, ignorance of the law is no excuse for an attorney's failure to abide by the RPCs. In re Berkowitz, 136 N.J. 134, 147 (1994).

Finally, there is the large number of cases – in all, about seventy-five, between 2009 and 2012 – in which respondent intentionally served Delaware clients. We, therefore, determine to impose a censure for respondent's misconduct.

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 Raymond S. Nadel
Docket No. DRB 15-372

Argued: February 18, 2016

Decided: August 3, 2016

Disposition: Censure

Members	Disbar	Suspension	Censure	Dismiss	Disqualified	Did not participate
Frost			X			
Baugh			X			
Boyer			X			
Clark			X			
Gallipoli			X			
Hoberman			X			
Rivera			X			
Singer			X			
Zmirich			X			
Total:			9			

Ellen A. Brodsky
Chief Counsel