SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket Nos. DRB 16-264 & 16-265
District Docket Nos. XIV-2010-2009E
XIV-2010-0671E, and XIV-2011-0263E

IN THE MATTER OF	
PADRAIC BRIAN DEIGHAN	
AN ATTORNEY AT LAW	

Decision

Argued: October 20, 2016

Decided: March 30, 2017

HoeChin Kim appeared on behalf of the Office of Attorney Ethics.

Marc D. Garfinkle appeared on behalf of the respondent.

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

These matters originally were before us based on a recommendation for an admonition filed by the District IIIB Ethics Committee ("DEC") and as a post-hearing ethics appeal. We determined to grant the appeal and to bring all of the matters on as a presentment. For the reasons set forth below, we determine to impose a censure for respondent's unethical conduct.

Respondent was admitted to the New Jersey bar in 1986. At the relevant times, he maintained an office for the practice of law in Haddonfield.

On August 31, 1992, respondent received a private reprimand for violating RPC 1.4(a) (now RPC 1.4(b)) (failure to communicate) and RPC 1.16 (failure to protect a client's interests upon termination of the representation). In the Matter of Padraic B. Deighan, DRB 92-285 (August 31, 1992).

In this matter, respondent was charged with violating RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation) in the Bradshaw matter; RPC 5.4(a) (sharing legal fees with a nonlawyer) and RPC 5.5(a)(1) (unauthorized practice of law) in the Sterne matter; and RPC 5.5(a)(1) in the Swett matter.

Respondent was also charged with violating RPC 8.4(c) for a matter involving Richard Holdren, and RPC 5.5(a)(1) for a matter involving Stuart Cartier. The Office of Attorney Ethics (OAE) moved to dismiss these counts prior to the start of the hearing because both grievants are deceased and the OAE could not proceed without them. The motion was granted.

The Bradshaw Matter (DRB 16-264)

Frankie Bradshaw met respondent on Match.com and they became friends. In 2009, after the death of her father, Bradshaw

received a $20,000 inheritance. She used $10,000 to pay bills and discussed with respondent the use of the remaining $10,000. He proposed that she, along with eleven others, invest in the purchase of tax liens in Ohio. Each investor would contribute $10,000 toward a bulk purchase of $120,000. According to respondent, however, the only potential investors were his sister ($10,000) and his cousin ($5,000).

On February 12, 2009, respondent executed a promissory note, which outlined three possible outcomes for Bradshaw's investment. First, if she chose to retain the real estate tax lien until its sale in November 2009, she would receive a statutory eighteen percent return (repayment of $11,800). Second, she could remain in the investment until foreclosure, which could occur one year from the date of the tax sale, and receive a portion of the proceeds, if any, from the sale. Third, she could withdraw as early as ninety days after the purchase and receive repayment at six percent interest (for a total of $10,600).

The note also provided that, if respondent filed for bankruptcy, the note and any other obligation of the borrower would become immediately due. Further, respondent represented in the note that he would purchase the real estate tax liens on February 18, 2009, six days from the date of the note, and that, "Borrower is embarking on a strategy of putting together One

Hundred Twenty Thousand Dollars to purchase bulk real estate tax liens." Respondent could not recall the reason for this provision, other than that it was based on a conversation he had had with the county clerk.

Respondent neither purchased the tax liens on February 18, 2009 nor told Bradshaw of his failure to do so. Two days later, on February 20, 2009, he filed a bankruptcy petition. Although he was aware that the bankruptcy filing triggered his obligations under the note, he did not tell Bradshaw that he filed for bankruptcy.

Bradshaw contacted the Montgomery County Tax Department to verify that respondent had purchased the liens. After that office told her that it had never heard of respondent, she contacted respondent, demanding the return of her $10,000. Although respondent initially told her that he had purchased the liens, he eventually admitted that he had not. Respondent then revealed that he had filed a bankruptcy petition, adding that it would not affect his obligation to repay her. He explained to her that he had not listed her as a creditor because he intended to continue to make payments and return her investment.

Respondent made payments to Bradshaw, but the testimony was conflicting as to how much he owed. Bradshaw believed, based on e-mail exchanges in June 2011, that respondent had paid $9,100 and still owed her $1,500. During this e-mail exchange,

respondent proposed that Bradshaw accept the $1,500 and execute a release. Although Bradshaw was unclear as to the parameters of the release, she agreed to the terms. Respondent, however, did not provide her with a release. Respondent claimed that he had paid Bradshaw $10,500, representing payment in full, but he produced no supporting documents.

According to Bradshaw, respondent had indicated that Andrea Cox was another investor. Using information from the internet, Bradshaw located Cox, contacted her, and learned that Cox was not an investor in the purchase of tax liens in Ohio.

Based on respondent's failure to purchase the property tax liens, his bankruptcy filing, and his failure to return her total investment, Bradshaw contacted the Securities and Exchange Commission, which referred the matter to the OAE.

For his part, respondent testified that he had a personal relationship with Andrea Cox, who told respondent that her house was in foreclosure. In an attempt to help Cox, respondent called the county and learned that a corporate buyer likely would buy all the tax liens. The clerk further explained that the buyer of the lien would receive the eighteen percent statutory interest rate, once the property was foreclosed.

Respondent suggested that Bradshaw invest in this venture, which would result in a guaranteed interest rate of eighteen percent and, to that end, he accepted her $10,000 in exchange

for the promissory note. The liens were not purchased because, he claimed, the county required him to purchase more than one lien, similar to a corporate buyer, and he was not prepared to do so. He claimed that he had kept Bradshaw informed of the status of the investment.

Respondent admitted that he had not told Bradshaw that he had filed a bankruptcy petition, based on the emergent nature of the filing. He "panicked" and "could think of nothing other than filing the bankruptcy." He explained that the bankruptcy was emergent because he had loaned money to his former wife, who was required to reimburse him by paying his homeowner's association bills. She, however, had failed to do so. Because his primary residence was subject to a sheriff's sale, he filed the bankruptcy petition on February 22, 2009. Bradshaw's funds became part of the bankruptcy estate and the bankruptcy petition eventually was dismissed, not discharged.

The Sterne Matter (DRB 16-265)

In early October 2009, respondent was approached by a friend to join him and the friend's partner in a company called "Debt Defense." Only one of the partners was an attorney. Respondent would serve as the "New Jersey attorney." The company maintained a network of attorneys in forty-one states and a call center, which would buy leads and "cold call" people who were in

default, to solicit their business. Respondent testified that he was referred only three cases in New Jersey and completed the work for those clients. He said none of those fees were shared with Debt Defense. In his answer, however, he admitted that "he received fees from Homesavers Law Group for only New Jersey properties." Homesavers Law Group (HLG) was affiliated with respondent's law practice in Haddonfield.

Respondent explained that the change in applicable laws rendered loan modifications hard to procure. He believed that, to qualify for a loan modification, the client's loan had to be delinquent. Based on his background in computer science, respondent developed a computer program to evaluate potential candidates for modification. Although the financial arrangement was unclear, Debt Defense used respondent's software for a fee.

In July 2010, Debt Defense ceased operating its business because of a dispute between the partners. The company "just closed the door" and, according to respondent, abandoned twenty-two to twenty-four clients, who had open matters. Respondent contacted these clients, including Jeffrey Sterne, Stuart Cartier, and Lynne and Karey Swett, who, according to respondent, had been denied a loan modification prior to respondent's involvement. Respondent testified that Sterne and Swett had given their payment to Debt Defense.

Respondent explained that, because Debt Defense was no longer in business, he called Lorn Walberg, the Washington State attorney he believed was involved in Debt Defense, to ask him how he planned to handle some of the abandoned clients in Washington, since respondent was not licensed in that state. According to respondent, Walberg had no interest in remedying the matter. Respondent, thus, "asked his permission to operate under him and he said fine." Respondent claimed he was trying to do the right thing.

Respondent further alleged that Debt Defense employees had put his name on Debt Defense letterhead and misrepresented that he was the "leader of the team of attorneys." Respondent had been unaware of the misrepresentations made by Debt Defense.

Although respondent acknowledged that he was not admitted pro hac vice in Washington, he believed that his actions did not constitute the practice of law in that State. He affiliated with Walberg only as an "additional protection." Further, he believed he was not subject to Washington law regarding the proper licensing or bar membership for handling mortgage modifications.

As to the individual clients, Sterne was interested in modifying his mortgage and found the website Homesavers.com. Respondent claimed that Homesavers.com was different from Homesaver.pro, with which he was affiliated. Sterne, however, hired HLG through Erin Richards-Fuentes. Fuentes told Sterne

that respondent was the attorney of record for HLG and was licensed to practice in forty-eight states. According to respondent, Fuentes worked for Debt Defense, but not for him.

On February 12, 2010, Sterne signed an engagement letter with "the Law Office of Padraig [sic] Deighan". According to Sterne, he had paid $2,890.72, on February 11, 2010, via credit card, to Fuentes at Homesavers.com for the modification. Respondent, however, denied that Sterne had paid him. Sterne did not speak with respondent until March 2010; his prior communications had been with Fuentes.

After talking with respondent, Sterne believed that respondent would contact Bank of America to obtain a lower interest rate. He also believed that Fuentes would prepare the file and respondent would handle all of the bank negotiations. In March 2010, Fuentes informed Sterne that the modification had been approved and that respondent needed to finalize a few issues.

During this time, Sterne had not been delinquent in his loan payments; however, he later received a notice of foreclosure. In June or July 2010, respondent told Sterne that Bank of America had indicated that, because Sterne was delinquent, he was not eligible for a modification. Respondent told Sterne that he would continue to pursue the modification.

Respondent admitted that he personally contacted Sterne for several months to assist him in his loan modification attempts. In October 2010, Sterne arranged to meet respondent in Las Vegas to discuss the lack of progress on the modification. Although respondent claimed that Sterne was in Las Vegas on vacation, Sterne maintained that he arranged the trip for the purpose of meeting respondent to discuss the modification.

Prior to this meeting, based on respondent's representations, Sterne believed that respondent would finalize the modification and that Bank of America was impeding the process. After the Las Vegas meeting, Sterne "realized [he] was being took." He contacted various state agencies and learned that respondent was not licensed to practice law in Washington.

Respondent was not able to obtain a modification of Sterne's mortgage, which, according to respondent, was denied for "valid reasons." Respondent claimed that, when he spoke with Sterne in September 2010, his modification application had already been denied because he had lied to Bank of America about his income. Apparently, the bank discovered that Sterne was receiving income in addition to his reported disability payments.

Ultimately, Sterne was able to obtain a modification through his own efforts. When he asked respondent to refund the

fee he had paid, respondent told him to "read the retainer" because it was a nonrefundable fee.

The Swett Matter (DRB 16-264)

Lynne and Karey Swett retained respondent to refinance their home mortgage in order to obtain a lower interest rate. Karey did not know in which jurisdictions respondent was licensed to practice law. On April 8, 2010, the Swetts paid $2,800 to HLG via an electronic debit from Lynne's account. Although respondent admitted he performed services for the Swetts, he claimed that he had received only $150 from them to analyze their case using his computer program.

Respondent and the Swetts signed an engagement letter, dated April 12, 2010. The Swetts believed that the fees they paid were for respondent's services.

The Swetts had a significant number of conversations with Fuentes, who said she "represented Mr. Deighan," and with Michelle Morrow, who held herself out to be a "Processor" at "The Law Offices of Padraig [sic] Deighan." However, they had only one conversation with respondent and began to develop a sense of distrust, because they had paid respondent and were not seeing any results.

In his answer to the amended complaint, respondent admitted that he had one phone conversation with the Swetts. He also admitted that his handwritten notes showed the following: (1) from August 6, 2010 to December 10, 2010, he attempted to obtain a status of the Swetts' modification from the prior individual working on their application and called Wells Fargo on behalf of the Swetts; (2) Lynne Swett told respondent, on November 9, 2010, that Karey would be laid off on December 10, 2010; (3) on November 16, 2010, respondent called Wells Fargo and learned that their application was still under review; (4) on December 6, 2010, Karey told respondent that Wells Fargo had denied their modification, based on insufficient income, because Lynne was on Family Medical Leave and Karey was about to be laid off; (5) respondent told Karey to contact him when they returned to work; and (6) on December 10, 2010, the Swetts gave respondent a draft letter of reconsideration, but respondent advised them that they would not obtain the modification unless they returned to work. Respondent directed them to follow-up when they were back at work.

Respondent did not obtain a lower interest rate for the Swetts. Karey explained, "[T]hey did not help me one bit." Karey learned from the bank that it was unfamiliar with respondent and that he had not contacted them on the Swetts' behalf. Karey was able to refinance his mortgage on his own through his bank.

Karey testified that he believed respondent simply took his money with no intention of doing any work. Only after Karey filed the grievance did he learn that respondent was not licensed in Washington.

As previously noted, the DEC granted the presenter's motion to dismiss the Holdren and Cartier matters. Thus, no testimony was taken with regard to those counts in the complaint.

* * *

Following the hearing, the DEC requested counsel to address the issue of when the Washington Mortgage Broker Practices Act (MBPA) became effective and how it related to respondent's handling of the Sterne and Swett matters. Additionally, the panel sought information regarding the unauthorized practice of law under Washington law.

The presenter pointed out that, effective January 1, 2007, the MBPA provided that only a licensed mortgage broker may assist a Washington resident with a loan modification, unless exempt. Wash.Code.Rev. §19.146.905 (2016). She argued that the MBPA applied to both the Sterne and Swett matters.

In turn, respondent conceded that he may have been mistaken regarding the Washington loan modification law, but maintained that he had not engaged in the unauthorized practice of law because he had not received or expected to receive compensation for his services and, therefore, the MBPA did not apply.

The hearing panel declined to find that respondent had violated RPC 8.4(c) in the Bradshaw matter and RPC 5.4(a) and RPC 5.5(a)(1) in the Sterne matter. As to the Bradshaw matter, the panel stated, "there were certain misunderstandings and disagreements between [grievant] and [r]espondent in connection with this unsuccessful business transaction, but the burden of proof was not satisfied by clear and convincing evidence that [r]espondent engaged in ethical [sic] conduct within the meaning of *RPC 8.4(c)*."

Likewise, in the Sterne matter, although the panel found that Sterne paid $2,890.72 for mortgage modification services, it concluded there was insufficient evidence that respondent had received or expected to receive any of those funds. The panel also found insufficient evidence that respondent had performed legal or mortgage modification services because Sterne's mortgage was not in default.

In the Swett matter, the hearing panel found that respondent violated RPC 5.5(a)(1) for practicing law in Washington, where he was not licensed. The panel found that the evidence established that respondent received a $2,800 payment from the Swetts through HLG, which respondent owned or operated. The panel further found that respondent entered into an engagement letter with the Swetts; that he admitted that he provided mortgage modification services on behalf of the Swetts;

and that respondent's handwritten notes detailed the work that he did on the matter. The panel determined that the MBPA applied to respondent because he was paid in the Swett matter and signed an engagement letter indicating that he expected to be paid. The panel, thus, found that respondent violated RPC 5.5(a)(1).

In recommending an admonition, the panel did not consider respondent's private reprimand as an aggravating factor, because it was too remote in time and nature.

The OAE appealed the dismissal of the charges related to the Sterne matter, pointing out that respondent admitted having assisted Sterne with his modification after he learned that Walberg would not represent the Washington clients. The OAE contended that, under Washington law, respondent had to be either a licensed mortgage broker or an attorney licensed in that state to assist Sterne with his modification; because respondent was neither, respondent engaged in the unauthorized practice of law, in violation of RPC 5.5(a)(1).

The OAE further asserted that respondent admitted that he had received fees for assisting residents in New Jersey matters, based on referrals from the call center, and that HLG collected a portion of that fee. Thus, the OAE argued that respondent violated RPC 5.4(a).

In reply to the appeal, respondent claimed that he was not required to be an attorney to comply with Washington law

regarding loan modifications because he had no "interest of personal gain."

* * *

Following a de novo review of the record, we are satisfied that the DEC's finding that respondent's conduct in the Swett matter was unethical is fully supported by clear and convincing evidence. We disagree, however, with the remainder of the DEC's findings and determine that respondent violated RPC 8.4(c) in the Bradshaw matter, RPC 5.5(a)(1) in the Sterne matter, and RPC 5.4(a) in the unnamed New Jersey matters.

In the Bradshaw matter, the hearing panel declined to find that respondent violated RPC 8.4(c), which provides that "[i]t is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation." An attorney's misrepresentation by silence may constitute a violation of RPC 8.4(c). See In re Boyd, 221 N.J. 482 (2015).

Here, respondent, who had a personal relationship with Bradshaw, convinced her to invest $10,000 in the purchase of tax liens in Ohio. He led her to believe that she was one of twelve investors, and that each investor was contributing $10,000. On February 12, 2009, respondent executed a promissory note outlining the potential possibilities for return on Bradshaw's investment. The note also contained an acceleration clause in the event respondent filed for bankruptcy and indicated that the

liens would be purchased on February 18, 2009. Respondent did not purchase the liens in accordance with the note and filed for bankruptcy eight days after he had executed the note. Respondent admitted that he did not tell Bradshaw that he filed for bankruptcy. Moreover, she learned about his failure to purchase the liens after she called the county - not from him.

Respondent focused on his willingness to make payments to Bradshaw to return her investment, despite his filing for bankruptcy. The testimony is not clear as to how much respondent paid, how much he promised to pay (including interest), and how much remained to be paid. All parties agreed, however, that some payments were made. These payments, however, are not relevant to respondent's original misrepresentation to Bradshaw about the nature of the investment.

According to Bradshaw, respondent told her that she was investing with eleven others for a total investment of $120,000. Respondent, however, testified that there would be only three investors for a total of $25,000. Although respondent presented no documents to corroborate his position, Bradshaw supported her testimony with the promissory note that respondent executed. That note provided that "Borrower is embarking on a strategy of putting together One Hundred Twenty Thousand Dollars to purchase bulk real estate tax liens." In fact, respondent never

"embarked" on such a strategy and could offer no explanation for having included this representation in the note.

Respondent's misrepresentations are further compounded by his failure to purchase the liens on the day he represented he would do so and his failure to inform Bradshaw that he filed bankruptcy eight days after borrowing $10,000 from her. Although he claimed that the bankruptcy filing was emergent, we find it implausible that he would not have taken the time to contact his "friend," Bradshaw, to inform her of his financial situation and the effect it would have on her investment. The evidence suggests that he never intended to invest Bradshaw's money, due to his own financial circumstances.

Thus, based on respondent's misrepresentations, the evidence supports a finding that, in the Bradshaw matter, respondent violated RPC 8.4(c).

The Sterne and Swett matters involve respondent's unauthorized practice of law for mortgage modifications in Washington, and fee-sharing in the Sterne matter.

In Washington, as discussed in the post-hearing submissions, individuals who engage in mortgage modifications are bound by the Mortgage Broker Practices Act. Wash. Rev. Code §19.146.010 (2016). The parties admit that this law was in effect when respondent represented Sterne and the Swetts.

Under the MBPA, which applies to loan originators and mortgage brokers, among others, individuals who wish to negotiate mortgage modifications are required to become licensed mortgage brokers, unless they fall within an exemption, such as an attorney licensed to practice law in Washington (with additional requirements). Wash. Rev. Code §19.146.020(c) (2016). Loan originator is defined as "an individual who for direct or indirect compensation or gain, or in the expectation of direct or indirect compensation or gain . . . offers or negotiates terms of a residential mortgage loan." Wash. Rev. Code §19.146.010(11)(a) (2016). Further, this subsection states, "'Loan originator' also includes a person who holds themselves out to the public as able to perform any of these activities." Wash. Rev. Code §19.146.010(11)(a) (2016). There is no dispute that respondent was neither a licensed mortgage broker nor a licensed attorney in Washington.

In the Swett matter, the panel correctly found that the evidence supported a finding that respondent violated RPC 5.5(a)(1). Lynne and Karey Swett retained respondent in an effort to refinance their home in order to obtain a lower interest rate. On April 8, 2010, the Swetts paid $2,800 to HLG via an electronic debit from Lynne's account and signed an engagement letter, dated April 12, 2010, which respondent also executed. Respondent admitted that, from August 6, 2010 to

December 10, 2010, he attempted to obtain a status of the Swetts' modification, he talked to Lynne about Karey's employment, he contacted the bank on various occasions to discuss their modification, and he reviewed correspondence regarding the denial of their application. Although respondent was not successful in lowering the Swetts' interest rate, clearly, he acted as a "loan originator" under Washington law when he engaged in these activities on behalf of the Swetts.

The DEC found that respondent received or expected to receive payment for these services because of his signature on the engagement letter. Payment, however, or the expectation of payment, is not relevant. Under Washington law, a loan originator is a person who holds himself out to the public as able to offer or negotiate terms of a residential mortgage loan regardless of whether he receives compensation for that service. Thus, even if true, respondent's claim that he performed these services with no expectation of payment and with the intent only to help otherwise abandoned clients is irrelevant. Respondent was neither licensed to practice law in Washington nor properly licensed as a mortgage broker. Therefore, by handling the Swetts' matter, he engaged in the unauthorized practice of law, a violation of RPC 5.5(a)(1).

Likewise, respondent engaged in the unauthorized practice of law in handling the Sterne matter. On February 12, 2010

Sterne signed an engagement letter with "the Law Office of Padraig [sic] Deighan" and paid $2,890.72, via credit card, with the expectation that respondent would communicate with Bank of America to obtain a lower interest rate.

Respondent, indeed, communicated with Bank of America in Sterne's behalf, and, in June or July 2010, told Sterne that Bank of America had reported that, because Sterne was delinquent, he was not eligible for a modification. Respondent however, represented he would continue to pursue the modification. Respondent admitted that he personally contacted Sterne for several months to assist him in his modification efforts.

Although respondent never succeeded in modifying Sterne's mortgage, Sterne was able to do so on his own. When Sterne asked respondent to refund the fee he had paid, respondent told him to "read the retainer" because the fee was nonrefundable.

As in the Swetts matter, the record clearly establishes that respondent engaged in negotiations with Bank of America in Sterne's behalf and, to that end, discussed the matter with Sterne on various occasions, even having an in-person meeting with Sterne about the representation. Respondent did not deny that he was acting on behalf of Sterne, but claimed he was doing so for no fee and therefore, was not subject to the MBPA. As discussed above, payment is irrelevant. Further, respondent's

claim that he was not paid or did not expect to be paid is questionable in light of his refusal to refund the "nonrefundable fee." For these reasons, respondent violated RPC 5.5(a)(1) in the Sterne matter.

Respondent also violated RPC 5.4(a) in the unnamed New Jersey matters. That Rule provides that a lawyer "shall not share legal fees with a nonlawyer." The OAE relies on respondent's answer to the ethics complaint in support of its position that respondent admittedly violated this RPC. Specifically, the complaint alleged that respondent denied receiving payment with regard to the Washington properties, "noting that he received fees from Homesavers Law Group for only New Jersey properties" In respondent's answer, he stated, "Admitted." Although respondent's testimony on this issue was contrary to his answer, it is clear that respondent's law practice was affiliated with HLG, which included nonlawyers. HLG accepted fees and distributed a portion of those fees to respondent. Respondent's fee sharing with HLG in the unnamed New Jersey matters, thus, violated RPC 5.4(a).

In sum, respondent violated RPC 5.5(a)(1) in the Swett and Sterne matters, RPC 8.4(c) in the Bradshaw matter, and RPC 5.4(a) in unnamed New Jersey matters.

As to the quantum of discipline, generally, a misrepresentation to a client requires the imposition of a

reprimand. In re Kasdan, 115 N.J. 472, 488 (1989). A reprimand may still be imposed even if the misrepresentation is accompanied by other, non-serious ethics infractions. See, e.g., In re Singer, 200 N.J. 263 (2009) (reprimand imposed on an attorney who misrepresented to his client for a period of four years that he was working on the case; the attorney also exhibited gross neglect and lack of diligence, and failed to communicate with the client; no ethics history); In re Wiewiorka, 179 N.J. 225 (2004) (reprimand for an attorney who misled the client that a complaint had been filed; in addition, the attorney took no action on the client's behalf and did not inform the client about the status of the matter and the expiration of the statute of limitations).

Further, discipline imposed on attorneys who practice law in jurisdictions where they are not licensed ranges from an admonition to a suspension, depending on the presence of other ethics violations, the attorney's disciplinary history, and the aggravating and mitigating factors. See, e.g., In re Benedetto, 167 N.J. 280 (2001) (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 South Carolina, although he was not licensed in that jurisdiction); In re Butler, 215 N.J. 302 (2013) (censure for

attorney who practiced with a law firm in Tennessee, pursuant to an "of counsel" agreement, although not admitted there); and In re Lawrence, 170 N.J. 598 (2002) (three-month suspension for attorney practicing law in New York, where she was not admitted; matter proceeded as a default).

In cases involving improper fee sharing with nonlawyers, the discipline has ranged from an admonition to a lengthy suspension, depending on the severity of the lawyer's conduct, the presence of other serious violations, and the lawyer's ethics history. See, e.g., In the Matter of Paul R. Melletz, DRB 12-224 (November 16, 2012) (admonition for attorney who hired a paralegal for immigration matters as an independent contractor and, for a few years, evenly divided with her the flat fee charged to immigration clients); In re Agrapidis, 188 N.J. 248 (2006) (reprimand imposed where, over a four-year period, attorney shared fees with nonlawyer employees on twelve occasions by paying them a percentage of legal fees received from clients whom the employees had referred to him; the attorney was not aware of the prohibition against fee-sharing and viewed the payments as "bonuses"); In re Macaluso, 197 N.J. 427 (2009) (censure imposed on attorney, who, as a nominal partner, participated in a prohibited compensation arrangement with an employee and failed to report the controlling partner's misconduct); In re Fusco, 197 N.J. 428 (2009) (companion case to

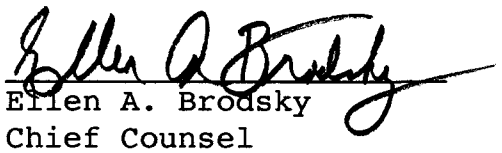
Macaluso) (attorney suspended for three months for paying a nonlawyer claims manager both a salary and a percentage of the firm's net fee recovered in personal injury matters that were resolved with the manager's "substantial involvement"; the claims manager received a larger percentage of the firm's fees in cases that he had referred to the firm; other infractions included failure to supervise nonlawyer employees and failure to report another lawyer's violation of the RPCs); and In re Carracino, 156 N.J. 477 (1998) (six-month suspension for attorney who agreed to share fees with a nonlawyer, entered into a law partnership agreement with a nonlawyer, engaged in a conflict of interest, displayed gross neglect, failed to communicate with a client, engaged in conduct involving misrepresentation, and failed to cooperate with disciplinary authorities).

Here, respondent violated three different RPCs in at least six different client matters: Bradshaw, Sterne, Swett and at least three unnamed New Jersey matters. We agree with the DEC that respondent's prior private reprimand, issued in 1992, is too remote to consider an aggravating factor. There are no mitigating factors to consider. Given the range of discipline for each of these violations and the absence of any mitigating factors, we determine to impose a censure.

Member Gallipoli voted to impose a three-month suspension.

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 Matters of Padraic B. Deighan
Docket No. DRB 16-264 and DRB 16-265

Argued: October 20, 2016

Decided: March 30, 2017

Disposition: Censure

Members	Censure	Three-month Suspension	Did not participate
Frost	X		
Baugh	X		
Boyer	X		
Clark	X		
Gallipoli		X	
Hoberman	X		
Rivera	X		
Singer	X		
Zmirich	X		
Total:	8	1	

Ellen A. Brodsky
Chief Counsel