SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. 17-176
District Docket No. XIV-2016-0265E

IN THE MATTER OF	:
DANIEL JAMES DOMENICK	:
AN ATTORNEY AT LAW	:

Decision

Argued: July 20, 2017

Decided: November 17, 2017

Joseph A. Glyn appeared on behalf of the Office of Attorney Ethics.

Respondent did not appear for oral argument, despite proper service.

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

This matter was before the Board 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 in Pennsylvania. Respondent has not opposed the motion.

The charges against respondent arose out of his participation in a mortgage debt relief scheme. He agreed to disbarment in Pennsylvania, after the Disciplinary Board of the

Supreme Court of Pennsylvania (Disciplinary Board) filed a formal ethics complaint, charging him with having violated Pennsylvania RPCs 1.3, 1.4(a)(3)-(a)(4), 1.5(a), 1.15(b), 1.16(d), and 8.4(c). Those RPCs are the same as, or equivalent to, New Jersey RPCs 1.3 (lack of diligence), 1.4(b) (failure to communicate with the client), 1.5(a) (unreasonable fee), 1.15(b) (failure to promptly disburse funds), 1.16(d) (upon termination of representation, failure to protect the client's interests), and 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation).

The OAE seeks respondent's disbarment. In our view, however, his conduct does not merit disbarment in this state. Thus, we determined to grant the motion for reciprocal discipline, and impose a one-year prospective suspension on respondent for his misconduct.

Respondent was admitted to the New Jersey and Pennsylvania bars in 2012. Presently, he does not engage in the private practice of law.

Respondent has no disciplinary history in New Jersey, but has been administratively ineligible to practice since August 24, 2015, based on his failure to pay his attorney registration fees, and since November 16, 2015, based on his non-compliance with his mandatory continuing legal education requirements. He

was disbarred by the Supreme Court of Pennsylvania on February 23, 2017.

The facts are taken from the Disciplinary Board's complaint filed against respondent.[1] The charges arose out of his association with "A," a nonlawyer, whose Ohio real estate license had been revoked in 2009, a fact unknown to respondent.

When respondent was admitted to the Pennsylvania bar, in January 2012, he was twenty-six years old, unemployed, and had accumulated more than $230,000 in student loan debt. In August 2013, respondent answered a Craigslist advertisement seeking an "associate attorney." On an unidentified date, he was hired by Williams Legal Group (WLG), a law firm affiliated with "A," which held itself out as a national mortgage debt relief entity. WLG operated in accordance with a business model, adopted and marketed by "A."

After respondent was hired by WLG, he opened his own law practice, under the name Domenick Legal Group, and operated according to "A"'s business model. Respondent "mostly" represented clients who resided, and whose realty was located,

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[1] In consenting to disbarment in Pennsylvania, respondent admitted that the facts set forth in the ethics complaint were true and that he "could not successfully defend himself against [the charges]."

in states other than Pennsylvania and New Jersey, the only jurisdictions in which he was admitted to practice law.

Respondent agreed to provide clients with "pre-trial services" and "limited scope representation" in prosecuting financial hardship and wrongful foreclosure actions. These services included advising clients, drafting pleadings, and attempting to negotiate new terms for his clients' mortgages with lenders and/or loan servicers. In exchange, the clients agreed to "a substantial advance payment of fee," followed by "continuing monthly installment advance payments of fee, which were typically debited directly from the clients' bank accounts with the written approval of the clients."

Respondent was entrusted with the advance payments of fees he collected from each client. Yet, he failed to hold those monies separate from his own property and failed to perform work sufficient to earn the fees.

Respondent was not admitted to practice law in the jurisdiction of those client matters that resulted in the filing of grievances against him. Although respondent had attempted to secure local counsel in those jurisdictions, he was unsuccessful in doing so. Nonetheless, he failed to withdraw promptly from those representations, and failed to terminate the monthly

installment advances of fees that he was collecting from the clients.

"A" required respondent's law practice to utilize the fee structure that "A" had established. "A" falsely assured respondent that, although his business model had been challenged by disciplinary authorities in several states, it had survived those challenges on the finding that it was "ethically proper." Respondent relied on "A"'s false representations.

"A"'s business model also required respondent to share with "A" a percentage of the legal fees that respondent collected from his clients. Respondent knew of, and agreed to comply with, this requirement. For his part, respondent retained approximately twelve to twenty-seven percent of the gross receipts that he collected from each client.

With respondent's "agreement and acquiescence," "A" had access to, and control of, respondent's bank accounts, including his IOLTA. One of "A"'s employees was a bookkeeper in respondent's law firm.

"A"'s business model required clients to sign forms authorizing direct debits from their bank accounts. Respondent complied with this requirement. As a result, "A" was able to issue electronic checks, payable to Domenick Legal Group, and drawn on the accounts of respondent's clients.

Between March 2014 and September 2015, respondent's conduct "harmed" thirty-four clients in thirteen states, from whom he had collected more than $500,000 in legal fees.

According to the Disciplinary Board, respondent engaged in the unauthorized practice of law in multiple jurisdictions; charged and collected illegal and/or clearly excessive fees from clients involved in mortgage foreclosure actions, some of whom were least able to afford to pay them; and failed to refund those unearned fees to his clients.

At some point, respondent understood "the situation in which he had placed himself," which caused feelings of remorse and depression. In the fall of 2015, he obtained assistance from the Lawyers Concerned for Lawyers program. Toward the end of 2015, respondent took steps to extricate himself from his association with "A."

By January 1, 2016, respondent had severed all ties with "A," and briefly operated his law office independently. In that same year, he also entered and completed inpatient treatment. As of the date of the Pennsylvania ethics complaint, respondent was attending support group meetings one to three times per week.

Based on the above conduct, the Disciplinary Board alleged that respondent had violated various disciplinary rules in eleven states, including Pennsylvania and New Jersey. In

Pennsylvania, the Disciplinary Board charged respondent with having violated Pennsylvania RPCs 1.3, 1.4(a)(3), 1.4(a)(4), 1.5(a), 1.15(b), 1.16(d), and 8.4(c). As stated above, with the exception of Pennsylvania RPC 1.4(a)(3) and 1.4(a)(4),[2] the other RPCs are the same, or equivalent to, New Jersey's corresponding RPCs.[3]

* * *

Following a review of the record, we determine to grant the OAE's motion for reciprocal discipline.

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

> The 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 on 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;
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> (B) the disciplinary or disability order of the foreign jurisdiction does not apply to the respondent;

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[2] Together, Pennsylvania RPC 1.4(a)(3) and 1.4(a)(4) mirror New Jersey RPC 1.4(b).

[3] Although the Disciplinary Board also alleged that respondent had violated New Jersey RPCs 1.1(a), 1.3, 1.4(b) and (c), 1.5(a), 1.15(a) and (b), 1.16(a) and (d), and 8.4(c) and (d), our role is to discipline an attorney based on the actual misconduct resulting in discipline in the foreign jurisdiction.

> (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 disciplinary 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.

Subsection (E) applies in this matter because the unethical conduct warrants substantially different discipline.

"[A] final adjudication in another court, agency or tribunal, that an attorney admitted to practice in this state . . . is guilty of unethical conduct in another jurisdiction . . . shall establish conclusively the facts on which it rests for purposes of a disciplinary proceeding in this state." R. 1:20-14(a)(5). Thus, with respect to motions for reciprocal discipline, "[t]he sole issue to be determined . . . shall be the extent of final discipline to be imposed." R. 1:20-14(b)(3).

Although we agree with many of the conclusions reached by the Pennsylvania disciplinary authorities, because the allegations of the Pennsylvania ethics complaint lack detail, we do not find that the record supports, to a clear and convincing standard, that respondent violated RPC 1.5(a) or RPC 1.15(b).

Pennsylvania RPC 1.5(a) and New Jersey RPC 1.5(a) are similar. The former prohibits a lawyer from entering into an agreement for, charging, or collecting "an illegal and clearly excessive fee." The latter requires a lawyer's fee to be "reasonable." Both RPCs identify eight factors that must be considered in determining whether a fee is "illegal and clearly excessive" or unreasonable, including, for example, the time, labor, and skill required and the time limitations imposed by the client or by the circumstances. RPC 1.5(a)(1) and (a)(5). The complaint lists none.

Although the complaint suggests that the fees collected by respondent were unreasonable, the allegations are insufficient to make that finding. For example, according to the complaint, respondent collected more than $500,000 in fees from thirty-four clients but "failed to perform work sufficient to earn the fees." Four of those clients were from New Jersey. Respondent collected between $10,950 and $12,200 from three of them, and $24,900 from one of them. Thus, with respect to those clients, in the absence of an analysis under RPC 1.5(a), there is simply no context for determining whether the fees charged were unreasonable. Thus, we dismiss that charge.

Pennsylvania RPC 1.15(b) and New Jersey RPC 1.15(b) require an attorney who receives funds in which a client or third person

has an interest to promptly notify and deliver to that client or third person any funds that the client or third person is entitled to receive. Presumably, this RPC violation was based on respondent's failure to refund the unearned and/or excessive fees collected from his clients. The facts alleged in the complaint do not support the charge, however.

RPC 1.15(b) applies to situations in which the attorney, for example, receives settlement monies in a personal injury case or proceeds from a property sale. It does not apply to the failure to return unearned or unreasonable fees. Rather, as discussed below, such conduct is governed by RPC 1.16(d). Thus, we dismiss that charge as well.

The record, however, contains clear and convincing evidence that respondent violated RPC 1.3 by failing to perform a single task for any of the clients he had agreed to represent and from whom he had required the advance payments of fees. He also violated RPC 1.4(b) because he failed to inform the clients that he was either unwilling or unable to carry out his representation of them.

The language of RPC 1.16(d) is the same in Pennsylvania and New Jersey. In short, the Rule requires a lawyer to take steps to protect a client's interests, upon termination of the representation, either by the lawyer or the client. Among other

things, RPC 1.16(d) requires a lawyer to refund any advance payment of fee that has not been earned or incurred. The complaint specifically states that respondent did not refund to any of his clients the unearned fees that he had collected from them. Thus, he clearly violated RPC 1.16(d).

Finally, the allegations of the Pennsylvania complaint support a finding that respondent violated RPC 8.4(c), which, in both Pennsylvania and New Jersey, prohibits an attorney from engaging in conduct involving dishonesty, fraud, deceit or misrepresentation. Respondent acted dishonestly by continuing to collect monthly installment advances of fees from clients in those jurisdictions where he was not authorized to practice law and, thus, where he was able to provide no services to advance those client matters.

To conclude, the facts alleged in the Pennsylvania complaint support a finding that respondent violated RPC 1.3, RPC 1.4(b), RPC 1.16(d), and RPC 8.4(c). They do not support a finding that he violated RPC 1.5(a) or RPC 1.15(b).

Unlike Pennsylvania, we find that respondent should not be disbarred in New Jersey. The crux of his misconduct was the failure to return unearned fees to his clients for whom he had performed no services. In Pennsylvania, that conduct clearly warrants disbarment under its RPC 1.15(i), which provides:

> A lawyer shall deposit into a Trust Account legal fees and expenses that have been paid in advance, to be withdrawn by the lawyer only as fees are earned or expenses incurred, unless the client gives informed consent, confirmed in writing, to the handling of fees and expenses in a different manner.

New Jersey RPC 1.15, which is vastly different from Pennsylvania's, does not have a paragraph (i), and no other provision of the Rule mirrors Pennsylvania RPC 1.15(i). Indeed, a New Jersey attorney is not required to safeguard an unearned fee in the trust account. To the contrary, "all funds received for professional services" are required to be deposited in the business account. R. 1:21-6(a)(2). Thus, the advance payment of a legal fee is not required to be deposited and maintained in the trust account until earned, unless an "explicit understanding has been reached with the client that they will be maintained in either the trust or the business account." Office of Attorney Ethics Random Audit Staff, Outline of Recordkeeping Requirements Under RPC 1.15 and R. 1:21-6 §II ¶(A)(4)(b)(i) and ¶(B)(1)(1) at 3 (2003).[4] See also David E. Johnson, Jr. Trust and Business Accounting for Attorneys §4.2 at 54-55 (5th Ed. 2008).

[4] Although the Outline refers only to the advance payment of "general retainers" and "costs," the principle applies to the advance payment of fees in any form.

The OAE's reliance on Michels, New Jersey Attorney Ethics §16:5-5 (Gann 2017), In re Moore, 143 N.J. 415 (1996), and In re Ort, 134 N.J. 146 (1993), in support of its recommendation that respondent be disbarred misses the mark. Although Michels cites Moore for the proposition that "the failure to return an unearned fee may constitute a knowing misappropriation of client funds, leading to disbarment," the attorney in Moore was not disbarred for that reason.

In Moore, the attorney committed misconduct in two default matters. In the first, he received a $7,500 advance toward payment of a $15,000 fee in a criminal matter. In the Matter of John A. Moore, DRB 95-163 (December 4, 1995) (slip op. at 2-3). He took no action on behalf of the client and, among other things, never returned the $7,500, despite a fee arbitration award for a full refund of that amount, a violation of RPC 1.16(d). Id. at 3-5. The attorney also violated RPC 1.3, RPC 1.4, and RPC 8.1(b) (failure to cooperate with disciplinary authorities). Id. at 6.

In the second default, Moore received a $1,000 retainer in connection with the representation of a client in another criminal matter. Id. at 6. He did nothing. Id. at 7. Moreover, he failed to return the unearned fee after promising his client

he would do so and even after he was ordered to do so following fee arbitration.

Although Moore was disbarred, the discipline was not based simply on his failure to return unearned fees. Rather, respondent had "disappeared," which, in our view, and under the circumstances, established that he had "stolen grievant's money." Id. at 8. We continued:

> Equally disturbing was respondent's utter and complete disregard for his obligations to the ethics system in this matter. He is no stranger to the New Jersey ethics system. Respondent was admitted to the New Jersey bar in 1985. By 1991, a continuous flow of ethics complaints had ensued against him ranging in subject matter from lack of communication and diligence to improper business transactions. His history of responsiveness has fallen far short of acceptable. Respondent's utter disdain for the ethics process cannot be tolerated.
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> [Ibid.]

After noting that Moore had exemplified similar conduct in the second matter, we observed:

> It is unquestionable that this respondent holds no appreciation for his responsibilities as an attorney. He has repeatedly sported a callous indifference to his clients' welfare, the judicial system and the disciplinary process. Such indifference parallels that displayed in In re Clark, 134 N.J. 522 (1993). In that case, the Court disbarred an attorney guilty of misconduct in six matters that was virtually identical to this respondent's.

> While respondent's conduct was confined to two matters, he clearly took unfair advantage of his client in the [first] matter by charging a sizeable retainer, doing nothing, promising to return the retainer and then ignoring the . . . family's repeated requests for their money. Respondent also displayed extreme indifference toward his clients, the judicial system and the ethics process. The Board can draw no other conclusion but that this respondent is not capable of conforming his conduct to the high standards expected of the legal profession. Simply put, he is beyond redemption.
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> [Id. at 9.]

Although the basic facts in both matters in Moore are similar, to wit, the attorney's acceptance of an advance payment of his fee, followed by his failure to provide any services and to return the unearned fee, Moore's conduct was far more egregious in substance, if not in number, than respondent's. First, respondent did not disappear and, thus, there can be no presumption that he stole the retainers. Theft of fees paid in advance is far different from the failure to return them. Second, respondent did not default. Rather, he admitted his misconduct and agreed to disbarment. Finally, the text quoted above demonstrates that the disciplinary system had been well familiar with Moore prior to his involvement in those matters.

Similarly, In re Ort, supra, 134 N.J. 146, does not mandate respondent's disbarment. Ort's behavior was so outrageous as to

call for no other result. For example, after the estranged widow of the decedent had retained Ort to handle the estate, he obtained a $25,000 equity loan, without her knowledge, under authority provided by a power of attorney that he had persuaded her to sign. In the Matter of David C. Ort, DRB 92-246 (November 5, 1992) (slip op. at 3-4). He then opened a bank account with the funds, naming only himself as a signatory. Id. at 4. He acted contrary to her express instructions on occasion and otherwise "unquestionably took advantage of an inexperienced elderly widow, who was not even present in this state to observe his actions, and created legal issues and work for his own enrichment." Id. at 11.

Further, conduct similar to respondent's has not resulted in disbarment. See, e.g., In re Gembala, 228 N.J. 275 (2017), where the attorney received a two-year suspension in Pennsylvania as the result of his affiliation with a for-profit loan modification company in connection with services provided to thirty-three homeowners. In the Matter of Joseph A. Gembala, III, DRB 15-421 (September 14, 2016) (slip op. at 1). On a motion for reciprocal discipline, he received a one-year, retroactive suspension.

Like respondent, Gembala affiliated himself with a for-profit loan modification service provider and operated his law

firm according to the provider's business model. Id. at 3-8. He collected the advance payment of legal fees from more than thirty-three distressed mortgage holders in nineteen states, but did little to no work on their matters, and failed to return unearned fees to them. Id. at 8-11. Although Gembala eventually refunded the retainers, he did so only after disciplinary proceedings had been instituted against him and he was required to do so. Id. at 18.

Gembala also was an integral part of the scheme inflicted on the clients. He participated in the marketing to and solicitation of "customers." Id. at 28. He also was charged with, and found guilty of, additional violations, including RPC 5.4(a) (unlawful fee-sharing with a nonlawyer) and RPC 7.5(a) (false or misleading letterhead). Id. at 20.

Given the similarity between this matter and Gembala, disbarment is inappropriate. We, thus, determined to impose a one-year suspension on respondent, to be served prospectively.

Members Baugh, Gallipoli, and Zmirich voted to impose a two-year suspension. Member Hoberman 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 Daniel J. Domenick
Docket No. DRB 17-176

Decided: November 17, 2017

Disposition: One-Year Suspension

Members	One-Year Suspension	Two-Year Suspension	Did not participate
Frost	X		
Baugh		X	
Boyer	X		
Clark	X		
Gallipoli		X	
Hoberman			X
Rivera	X		
Singer	X		
Zmirich		X	
Total:	5	3	1

Ellen A. Brodsky
Chief Counsel