

SUPREME COURT OF NEW JERSEY  
Disciplinary Review Board  
Docket No. DRB 17-225  
District Docket No. XIV-2015-0496E

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IN THE MATTER OF  
JOSEPH A. RIZZO  
AN ATTORNEY AT LAW

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Decision

Argued: September 14, 2017

Decided: December 14, 2017

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

Respondent did not appear, despite proper notice.

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 respondent's September 21, 2015 disbarment in Pennsylvania for his violation of the Pennsylvania equivalents of New Jersey RPC 1.3 (lack of diligence); RPC 1.4(b) (failure to keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for

information); RPC 1.4(c) (failure to explain the matter to the extent reasonably necessary to permit the client to make an informed decision regarding the representation); RPC 1.15(b) (failure to promptly disburse funds that a client or third person is entitled to receive); RPC 1.16(a)(1) (failure to withdraw from a representation if that representation will result in a violation of the RPCs or other law); RPC 1.16(d) (failure to refund an unearned fee); and RPC 5.5(a)(1) (practicing while ineligible). The OAE seeks either a reprimand or a censure. For the reasons expressed below, we determined to grant the motion and impose a censure.

Respondent was admitted to the New Jersey bar in 1999. He was subsequently admitted to the New York bar in 2000 and the Pennsylvania bar in 2007. He has no history of discipline in New Jersey.

Respondent has been ineligible to practice law in New Jersey since 2011 for failure to pay the annual attorney assessment to the New Jersey Lawyers' Fund for Client Protection (the Fund). Thus, pursuant to R. 1:28-2(c), the Court entered an

Order administratively revoking respondent's license to practice, effective August 28, 2017.<sup>1</sup>

On May 29, 2014, the Pennsylvania Office of Disciplinary Counsel (ODC) filed a Petition for Discipline charging respondent with failure to appear for an informal admonition to be imposed in a previous investigation, despite notice to appear. Respondent did not file an answer.

On September 4, 2014, a prehearing conference was held before the Disciplinary Board of the Pennsylvania Supreme Court (DBP). Because respondent failed to appear, or to file an answer, the facts of the Petition for Discipline were deemed admitted.

On October 15, 2014, at a hearing before a disciplinary panel of the DBP, disciplinary counsel asserted that respondent willfully failed to appear for an informal admonition and "to meet conditions that were attached to it in connection with an underlying disciplinary complaint filed against [him] by his client, Jessica Lee."

The underlying disciplinary complaint charged respondent with lack of diligence, failure to communicate, failure to

<sup>1</sup> Because respondent's misconduct pre-dated his administrative revocation, we retain jurisdiction pursuant to R. 1:28-2(c).

account for or return a \$1,500 retainer he had accepted from Lee, and practicing while administratively suspended.

Specifically, Lee, who retained respondent to assist her and her spouse in the purchase of a newly constructed home, alleged that respondent accepted a \$1,500 retainer but "abruptly discontinued" providing legal services to the Lees, and ceased communicating with her. Respondent did not refund Lee's retainer. Additionally, at the time Lee retained respondent in 2013, he had been ineligible to practice law since his administrative suspension on September 1, 2011.

Respondent did not reply to the initial or follow-up ethics complaints, despite proper service; did not satisfy the conditions of the Informal Admonition; did not answer the resultant complaint; did not appear at the pre-hearing conference in regard to that failure; and did not appear at the disciplinary hearing.

Disciplinary Investigator Stephen Schmitt testified before the panel regarding the extraordinary measures the ODC took to contact respondent, including, but not limited to, physically handing documents to respondent on at least one occasion and to his wife on another. Schmitt also contacted an attorney representing respondent in a bankruptcy matter to try to obtain contact information for respondent after Schmitt learned that

respondent's Easton property had been foreclosed. Schmitt tried all of respondent's attorney's suggestions, but was unable to contact respondent.

Disciplinary counsel argued that respondent compounded his difficulties with the ethics system by failing to respond or engage in the process in any meaningful way. Respondent's charges were initially minor: an isolated incident of unauthorized practice of law with some neglect, which would have resulted in only an informal admonition. Respondent, however, failed to meet the requirements of the discipline, refund the \$1,500 retainer, or return the client's materials. Disciplinary counsel recommended that respondent be suspended for one year and one day, and be required to refund the \$1,500 retainer to Lee.

On January 22, 2015, the panel found that respondent's "misconduct and his failure to appear for the prehearing conference and for the disciplinary hearing and his demonstrated disdain for the Pennsylvania Disciplinary system" warranted a "suspension of [r]espondent's license for a period of two years and one day." The panel also recommended that respondent be required to refund \$1,500 to Lee.

On July 20, 2015, the DBP issued its report recommending that respondent be disbarred. The DBP found that respondent

presented not "a scintilla of interest in his privilege to practice," and that the protection of the public mandated his disbarment. The DBP stated that respondent, by his failure to participate in the process, "forfeited any meaningful opportunity to accept responsibility and express remorse. Furthermore, [r]espondent has absconded with Lee's funds and has made himself unavailable to the disciplinary system by failing to provide his current address." The DBP considered that, although respondent had been admitted in 2007, he was administratively suspended by 2011 for failing to comply with his CLE requirements. Therefore, his lack of an ethics history was not considered to be a mitigating factor.

On September 21, 2015, the Supreme Court of Pennsylvania disbarred respondent, effective immediately.

According to the OAE, respondent's conduct in Pennsylvania equated to violations of the following New Jersey Rules of Professional Conduct: RPC 1.3, RPC 1.4(b), RPC 1.4(c), RPC 1.15(b), RPC 1.16(a)(1), RPC 1.16(d), RPC 5.5(a)(1).

The OAE noted that respondent's misconduct, although serious, involved only one client matter, but was compounded when, instead of participating in the ethics process, respondent willfully failed to appear at the initial informal admonition, and then continued to ignore the Pennsylvania ethics authorities

as the case progressed through the system. In addition, respondent did not refund Lee's \$1,500 retainer.

The OAE further noted that the record does not reveal whether respondent knew that he was administratively ineligible to practice law in Pennsylvania at the time he accepted Lee as a client. Finally, respondent did not notify the OAE of his Pennsylvania discipline, as required by R. 1:20-14(a)(1), and he has not responded to any of the OAE's correspondence. Moreover, respondent has been ineligible to practice law in New Jersey since 2011.

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On 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 it rests for purposes of disciplinary proceedings. Therefore, we adopt the findings of the Supreme Court of Pennsylvania and find respondent guilty of violating New Jersey RPC 1.3, RPC 1.4(b), RPC 1.16(d), and RPC 5.5(a)(1).

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

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;

(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;

(E) the unethical conduct established warrants substantially different discipline.

Subsection (E) applies in this case because respondent's unethical conduct warrants substantially different discipline in New Jersey than he received in Pennsylvania.

Respondent accepted a \$1,500 fee from Lee, to assist her in the purchase of new construction. He then "abruptly discontinued" providing legal services and ceased all communications. Respondent was ineligible to practice law when he committed this misconduct.

By doing little to no work on Lee's matter after he was retained to represent her and by ceasing all communications with her, respondent violated RPC 1.3 and RPC 1.4(b). The record does



not, however, support a finding that respondent violated RPC 1.4(c). The record lacks any information as to what respondent and Lee discussed when respondent took on her matter and whether or not he reasonably explained the matter to her. We, therefore, dismiss that alleged violation for lack of clear and convincing evidence.

Respondent was ordered to refund to Lee her \$1,500 retainer as a condition of his informal admonition. He failed to do so, in violation of RPC 1.16(d). Although RPC 1.15(b) was also charged for this misconduct, respondent's failure to refund an unearned fee is more appropriately addressed by RPC 1.16(d), rather than the more generic RPC 1.15(b) (failure to promptly disburse funds). We, therefore, dismiss the alleged violation of RPC 1.15(b).

Respondent also was charged with a violation of RPC 1.16(a)(1). Although he accepted the representation while he was ineligible to practice law in Pennsylvania, it is unclear whether he knew he was ineligible. RPC 1.16(a)(1) requires attorneys to withdraw from a representation if that representation will violate the RPCs. Therefore, if respondent knew that he was ineligible, his failure to withdraw would constitute a violation of RPC 1.16(a)(1). Here, however, because the record does not establish respondent's knowledge of his

ineligible status, we cannot find that he was aware that his failure to withdraw from the representation would violate the RPCs. We, therefore, dismiss the alleged violation of RPC 1.16(a)(1) for lack of clear and convincing evidence.

Finally, as noted, respondent was ineligible to practice law when he undertook Lee's representation, a violation of RPC 5.5(a)(1). It is unclear, however, whether he did so knowingly.

In sum, respondent violated RPC 1.3, RPC 1.4(b), RPC 1.16(d), and RPC 5.5(a)(1).

Practicing law while ineligible is generally met with an admonition if the attorney is either unaware of the ineligibility or advances compelling mitigating factors. An admonition may be sufficient, even if the attorney displays other, non-serious conduct. See, e.g., In the Matter of John L. Conroy, Jr., DRB 15-248 (October 16, 2015) (attorney practiced law while administratively ineligible to do so for failure to submit the required IOLTA forms, a violation of RPC 5.5(a); the attorney also violated RPC 1.5(b) when he agreed to draft a will, living will, and power of attorney, and to process a disability claim for a new client but failed to provide the client with a writing setting forth the basis or rate of his fee; thereafter, the attorney was lax in keeping his client and the client's sister informed about the matter, which resulted in

the client's pro se filing of the claim, a violation of RPC 1.3 and RPC 1.4(b); finally, the attorney failed to reply to the ethics investigator's three requests for information, a violation of RPC 8.1(b); we considered that, ultimately, the attorney had cooperated fully with the investigation by entering into a disciplinary stipulation, that he agreed to return the entire \$2,500 fee to help compensate the client for lost retroactive benefits, and that he had an otherwise unblemished record in his forty years at the bar).

A reprimand, however, usually is imposed when the attorney is aware of the ineligibility and practices law nevertheless. See, e.g., In re Moskowitz, 215 N.J. 636 (2013) (attorney practiced law knowing that he was ineligible to do so).

Respondent's misconduct, however, is similar to that of the attorney in In re Spiess, 165 N.J. 473 (2000), who received a three-month suspension. There, the attorney had agreed to administer an estate at a time when he was ineligible to practice law for his failure to pay his annual assessment to the Fund. After closing on property owned by the estate, the attorney failed to disburse the real estate deposit to the estate and, instead, took his fee before sending his client a bill and giving the client the opportunity to object to the fee. Thereafter, the attorney failed to respond to his client's

reasonable requests for information about the completion of the probate process. Finally, the attorney failed to reply to the grievance or file an answer to the ethics complaint. In the Matter of Robert C. Spiess, DRB 00-010 (May 22, 2000) (slip op. at 5).

We determined to impose a three-month suspension, relying on In re Namias, 157 N.J. 15 (1999) (reprimand for lack of diligence, failure to communicate, and unauthorized practice of law) and In re Dudas, 156 N.J. 540 (1999) (three-month suspension in default matter for lack of diligence, failure to safeguard property, unauthorized practice of law, and failure to cooperate with disciplinary authorities; attorney failed to pay the annual attorney assessment to the Fund, failed to timely complete an estate accounting, and was consistently unable to determine how much he held in trust for the estate). In aggravation, we considered Spiess' disciplinary history, which included a three-month suspension. In the Matter of Speiss, supra, DRB 00-010 (slip op. at 6).

Here, in the absence of aggravating factors, respondent's conduct would require, at a minimum, the imposition of a reprimand. There are, however, further considerations. Respondent also violated RPC 8.1(b) (failure to cooperate with disciplinary authorities) and with PA R.D.E. 217, which governs the activities

of "formerly admitted attorneys" in Pennsylvania, similar to R. 1:20-20 in New Jersey. We, therefore, consider this conduct in aggravation. Moreover, respondent failed to notify the OAE of the Pennsylvania discipline.


In light of these aggravating factors, we determine to impose a censure. In our view, because respondent has no disciplinary history, further enhancement to the level of discipline imposed in Spiess (three-month suspension) is not justified.

Members Gallipoli and Zmirich voted for a three-month suspension. Members Clark and 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:

  
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Ellen A. Brodsky  
Chief Counsel

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SUPREME COURT OF NEW JERSEY  
DISCIPLINARY REVIEW BOARD  
VOTING RECORD

In the Matter of Joseph A. Rizzo  
Docket No. DRB 17-225

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Argued: September 14, 2017

Decided: December 14, 2017

Disposition: Censure

<i>Members</i>	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:	5	2	2

  
Ellen A. Brodsky  
Chief Counsel