

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 17-275
District Docket No. XIV-2010-0656E

IN THE MATTER OF :
:
MARTIN S. STREIT :
:
AN ATTORNEY AT LAW :
:

Decision

Argued: October 19, 2017

Decided: January 30, 2018

Hillary K. 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 October 25, 2011 disbarment in New York, for his violation of the New York equivalents of New Jersey RPC 1.1(a) (gross neglect); RPC 5.5(a)(1) (practicing while suspended); RPC

8.1(b) (failure to cooperate with disciplinary authorities); and RPC 8.4(d) (conduct prejudicial to the administration of justice).¹ The OAE seeks a one-year suspension. For the reasons stated below, we determine to impose a one-year suspension.

Respondent was admitted to the New York bar in 1956 and the New Jersey bar in 1971. He has no history of discipline in New Jersey.

Respondent has been ineligible to practice law in New Jersey since September 26, 2011, for failure to pay the annual attorney assessment to the New Jersey Lawyers' Fund for Client Protection (the Fund). Thus, on August 28, 2017, respondent's license to practice in New Jersey was revoked, based on his failure to pay his annual registration fee for seven consecutive years.²

On April 23, 2008, the Departmental Disciplinary Committee for the New York Supreme Court, Appellate Division, First Judicial

¹ The OAE did not formally charge respondent with a violation of RPC 8.1(b), despite his having been found to have violated the New York equivalent of that Rule. It does cite respondent's failure to cooperate with New York disciplinary authorities, however, as an aggravating factor when addressing the recommended discipline.

² Pursuant to R. 1:28-2(c), because respondent's misconduct preceded the effective date of his license revocation, we retain jurisdiction in this matter.

Department (DDC) served respondent with a six-count Statement of Charges, alleging that: (1) he failed to cooperate with the DDC's investigation, in violation of DR 1-102(A)(5) (conduct prejudicial to the administration of justice), resulting in the DDC's filing two motions for respondent's temporary suspension (count one and count three); (2) he failed to produce his client file for Audrey Holmes-Williams (Holmes-Williams), despite having been served with a subpoena, in violation of DR 1-102(A)(5) (count two); (3) he failed to register with the Office of Court Administration (OCA) for the period 2006-2007, in violation of DR 1-102(A)(5) (count four); (4) he committed gross neglect, in violation of DR 6-101(A)(3) (count five); and (5) he engaged in conduct adversely reflecting on his fitness as a lawyer, in violation of DR 1-102(A)(7), by the conduct in counts one through five (count six).

Specifically, in January 1992, Holmes-Williams retained respondent in a personal injury matter involving a three-car automobile accident. In 1995, respondent filed her claim against Willie Williams, the driver of the car in which she had been a passenger. Williams brought a third-party action against the other defendants in the main action. After the commencement of the action, Holmes-Williams married Williams, who died on January 14, 1999.

In 2004, the Civil Court ordered Holmes-Williams to apply for

the appointment of a personal representative for Williams and cautioned her that, if she did not do so within 120 days, her suit would be dismissed. Through respondent's inaction, Holmes-Williams failed to have a personal representative appointed for Williams within the time prescribed, and two of the defendants moved to dismiss the case. The day before the March 8, 2005 return date of the motion, respondent requested an adjournment, citing his involvement in a criminal trial, health issues, and his loss of Holmes-Williams' file in the course of moving offices. The court dismissed the case on March 31, 2005.

In July 2005, respondent filed a notice of appeal, but never perfected it. Then, in November 2007, he filed a motion to vacate the dismissal of the complaint. The return date of that motion was adjourned several times, leading to an October 2009 motion by one of the defendants to dismiss it for failure to prosecute. As of the date of the Appellate Division's per curiam opinion, neither the motion to vacate the dismissal nor the motion to dismiss the motion to vacate were resolved.

Nonetheless, while these matters were pending, in February 2005, Holmes-Williams filed a "complaint" (presumably, an ethics grievance) against respondent. She complained that she had been in contact with respondent only three times after her suit had been filed in 1992, and that he had not returned any of her phone calls

since December 2004. Over the course of the next two years, respondent failed to reply to the DDC's request for documents and information, and failed to appear numerous times for depositions.

In 2007, respondent finally appeared for a deposition, during which he initially denied having received any of the DDC's communications. He eventually admitted having received the DDC's communications, except for one specific letter sent by way of fax. That letter, however, was merely a memorialization of a telephone conversation the DDC had with respondent. Respondent claimed that he had kept Holmes-Williams aware of the progress of her case by telephone and written communication, except for a period of a few years when she "disappeared down south." He attributed his two-and-one-half-year delay in moving to vacate the dismissal to his heavy criminal caseload. He conceded that he "should have moved faster." Respondent denied any willfulness in his non-responsiveness to the DDC's investigation, and asserted, generally, that other lawyers in his shared office space intercepted his mail.

On June 13, 2008, the Honorable Lewis L. Douglas, the referee in the New York disciplinary cases, conducted a preliminary hearing. Although respondent's Verified Answer, dated June 30, 2008, denied the six charges of unethical conduct, it did not deny specifically the underlying facts. On July 14, 2008, the referee

conducted a hearing on "liability." On September 1, 2008, the referee issued an interim report, finding respondent liable on five of the six charges. The referee dismissed Charge Four, because respondent had since registered and paid his fee to the OCA for the period 2006-2007.

The referee then held a hearing on the sanction to be imposed. In mitigation, respondent was eighty-one years old, a Navy veteran, and a solo practitioner who handled mostly indigent criminal and immigration cases. Four clients, including two long-term clients, testified as character witnesses on his behalf. Holmes-Williams testified that she had withdrawn her complaint upon respondent's assurance "that he would do better with the case, but nothing changed." At the hearing, Holmes-Williams agreed to accept a \$10,000 payment from respondent, who promised to send a certified check within thirty days.³ The referee recommended a suspension of at least one year.

³ It appears that, in lieu of a formal sanction, respondent offered Holmes-Williams \$10,000 as a settlement for his failure to prosecute her personal injury claim. Although the special referee had some reservations in this respect, he acknowledged that his ultimate recommendation "would be greatly influenced" if Holmes-Williams were made whole. Respondent apparently did not follow through on his promise. The special referee, therefore, issued his report and recommendation.

On February 19, 2009, a hearing panel issued a report sustaining the referee's findings on liability, and recommending a one-year suspension. The panel noted that the committee repeatedly tried to gain the cooperation of respondent, to no avail. Further, respondent continued to voice the same excuses appearing throughout the record, such as various physical problems and law office failures; issues with the law firm from which he rented space; hostility by the DDC staff; and bias by the special referee. He failed to take any responsibility for his poor handling of Holmes-Williams' matter or to show any remorse for the time and effort the DDC needlessly expended to gain responses, such as respondent's answer to the complaint and a copy of the case file at issue. In mitigation, the panel acknowledged respondent's fifty-two years of practice with only one prior admonition, and his representation of indigent clients.

On October 2, 2009, the Supreme Court of New York, Appellate Division, First Department (Appellate Division), suspended respondent for six months. The Appellate Division noted that, "while respondent's many years of practice, and his military service cannot be overlooked, it is evident that he neglected the matter entrusted to him over a very lengthy period of time, and was less than candid and cooperative when the investigation was ongoing." Hence, "a mere censure or admonition would serve to

ignore the significance of respondent's acts -- which was neglect of a matter entrusted to him by a client who had placed her faith in him." On July 9, 2010, the Supreme Court of New York, Appellate Division, First Department, issued an Order, suspending respondent for six months, effective August 5, 2010.

Respondent filed two motions in 2010, both for leave to appeal his suspension. Both motions were denied. He was served with the court's order of suspension in July 2010.

Subsequently, Kings County Family Court Judicial Hearing Officer, Anne G. Feldman, and Manhattan Criminal Court Judge Frank P. Nervo reported to the DDC that respondent had appeared before them while suspended, in November and December 2010, respectively. On May 20, 2011, the DDC filed a motion to disbar respondent, based on his unauthorized practice of law. Engaging in the practice of law while under an order of suspension is a misdemeanor in the State of New York and warrants immediate disbarment, without further proceedings, pursuant to N.Y. Judiciary Law § 486 (2017). In its motion, the DDC asserted that respondent had failed to file a required Affidavit of Compliance with the Suspension Order, and that he "failed to contest clear evidence of his violation of the order of suspension."

On October 25, 2011, the Appellate Division issued an Opinion and Order disbaring respondent without further proceedings.

As previously mentioned, the OAE recommended that respondent be suspended for one year. According to the OAE, respondent's initial six-month suspension in New York resulted from a finding that he violated:

1. DR 6-101(A)(3) (now N.Y. RPC 1.3(b)) equivalent to RPC 1.1(a);
2. DR 1-102(A)(5) (now N.Y. RPC 8.4(d)) equivalent to RPC 8.4(d); and
3. DR 1-102(A)(7) (now N.Y. RPC 8.4(h)) no RPC equivalent.

The OAE contends that respondent neglected a legal matter entrusted to him, engaged in conduct prejudicial to the administration of justice, and engaged in conduct that adversely reflected on his fitness as a lawyer.⁴ The OAE further argues that, although respondent was not formally charged with violating N.Y. RPC 5.5(a) (practicing law while suspended), he was disbarred for that conduct, and, hence, is guilty of its equivalent in New Jersey, RPC 5.5(a)(1). Finally, in addition to engaging in gross neglect, practicing while suspended, and failing to cooperate with disciplinary authorities, respondent failed to comply with New

⁴ Although the OAE asserted that practicing law while suspended is a crime in New York, but not in New Jersey, N.J.S.A. 2C:21-22(1)(b) provides that engaging in the practice of law in New Jersey without a license is a crime of the fourth degree.

York law by not filing an affidavit of compliance with the suspension order, similar to our R. 1:20-20 affidavit requirement.

The OAE concedes that, although respondent's misconduct is serious, disbarment is not warranted. Attorneys disbarred for the unauthorized practice of law in New Jersey typically are guilty of other serious misconduct, and have substantial ethics histories. Rather, here, respondent's unauthorized practice of law is similar to that of the attorney in In re Brady, 220 N.J. 212 (2015) (one-year retroactive suspension).

Brady represented three clients in municipal court after a Superior Court judge had restrained him from practicing law. Brady had been suspended for three months for gross neglect, lack of diligence, failure to communicate with clients, failure to protect a client's interest on termination of representation, misrepresentation, and pattern of neglect. He also failed to file the required R. 1:20-20 affidavit. Here, respondent's suspension Order was issued based on neglect after he failed to properly apply for the appointment of a personal representative in a personal injury matter, which had caused the action to be dismissed. Further, like Brady, respondent represented clients while suspended.

The OAE advances the following aggravating factors: respondent failed to cooperate with the New York ethics

authorities; as the court in New York found, his neglect of his client covered a "very lengthy period of time;" he failed to notify the OAE of his discipline in New York, as R. 1:20-14(a)(1) requires; and he had a minor disciplinary history in New York.

In mitigation, the OAE notes, respondent's unblemished record in New Jersey during his forty-six years of practice, his military service, and his age (eighty-four at the time of his disbarment in New York).

During oral argument, the OAE requested dismissal of its motion for reciprocal discipline, based on the administrative revocation of respondent's license, his "advanced age" and the fact that, as a practical matter, he will not be reinstated to practice law in New Jersey. We determined to deny that request.

* * *

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 disciplinary proceedings. Therefore, we adopt the findings of the New York Appellate Division and find respondent guilty of violating New Jersey RPC 1.1(a), RPC 5.5(a)(1), RPC 8.1(b), and RPC 8.4(d).

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; 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). Subsection (E), however, applies in this case because respondent's unethical conduct warrants substantially different discipline in New Jersey than he received in New York. Specifically, his ethics violations, for which he was disbarred in New York, would result in a suspension in New Jersey.

Respondent severely neglected a client matter over the course

of fourteen years. Although Holmes-Williams had retained respondent in 1992, he did not file a claim on her behalf until 1995. Nine years later, in 2004, the court ordered Holmes-Williams to seek the appointment of a personal representative on behalf of the defendant, her deceased husband. As a result of respondent's neglect, no appointment was made and, in 2005, the complaint was dismissed. Respondent attempted to have the matter reinstated, but that effort was unsuccessful because he failed to perfect the motion. Two years later, in 2007, he filed another motion to vacate the dismissal. That motion, too, was left unfinished. During the DDC's investigation, respondent blamed the two-year delay in filing the second motion to vacate the dismissal on his busy criminal caseload, but also admitted he should have filed sooner. Respondent's grievous conduct in this regard violated RPC 1.1(a).

Just before Holmes-Williams' matter was dismissed in 2005, she had filed a grievance against respondent, who replied to neither the DDC's requests for information nor to the grievance for two years. In 2007, respondent finally appeared for a DDC deposition. Ultimately, he blamed many circumstances for his misconduct, which led the referee in New York to find that respondent failed to accept responsibility for his misconduct. Respondent's failure to reply to the DDC for two years violated

RPC 8.1(b).

Based on his misconduct in the Holmes-Williams' matter, respondent was suspended in New York for six months, effective August 5, 2010. In November and December 2010, the DDC was notified that respondent was practicing law, despite his suspension only months earlier. Previously, respondent had moved for leave to appeal his suspension twice and was twice denied. Respondent, therefore, was aware that he had been suspended from the practice of law. Nevertheless, he represented clients three months after that suspension became effective. In so doing, respondent violated RPC 5.5(a)(1). He also failed to file the affidavit of compliance required by the New York equivalent of New Jersey R. 1:20-20, in violation of RPC 8.1(b) and RPC 8.4(d).⁵

⁵ Because the complaint did not charge respondent with additional RPC violations, we do not find that he violated them. We note them, however, simply to acknowledge the misconduct for the record. Specifically, during the twelve years that respondent represented Holmes-Williams, he failed to communicate with her regarding the status of her matter; made a misrepresentation by silence to her by not informing her that her complaint had been dismissed; failed to expedite her complaint/litigation; and attempted to induce her to withdraw her grievance against him in return for better service, all in violation of RPC 1.4(b) (failure to communicate), RPC 3.2 (failure to expedite litigation), RPC 8.4(c) (misrepresentation), and RPC 8.4(d), as addressed in A.C.P.E. Opinion No. 721 (administration of justice).

The level of discipline for practicing law while suspended ranges from a lengthy suspension to disbarment, depending on the presence of other misconduct, the attorney's disciplinary history, and aggravating or mitigating factors. See, e.g., In re Brady, supra, 220 N.J. 212 (one-year retroactive suspension imposed on attorney who, after a Superior Court judge had restrained him from practicing law, represented two clients in municipal court, and appeared in a municipal court on behalf of a third client, after the Court had temporarily suspended him; the attorney also failed to file the required R. 1:20-20 affidavit following the temporary suspension; significant mitigating factors, including the attorney's diagnosis of a catastrophic illness and other circumstances that led to the dissolution of his marriage, the loss of his business, and the ultimate collapse of his personal life, including becoming homeless, and, in at least one of the instances of his practicing while suspended, his desperate need to provide some financial support for himself; prior three-month suspension); In re Bowman, 187 N.J. 84 (2006) (one-year suspension for attorney who, during a period of suspension, maintained a law office where he met with clients, represented clients in court, and served as planning board solicitor for two municipalities; prior three-month suspension; extremely compelling circumstances considered in mitigation); In re Marra, 170 N.J. 411 (2002) (Marra

I) (one-year suspension for practicing law in two cases while suspended and substantial recordkeeping violations, despite having previously been the subject of a random audit; on the same day that the attorney received the one-year suspension, he received a six-month suspension and a three-month suspension for separate violations, having previously received a private reprimand, a reprimand, and a three-month suspension); In re Lisa, 158 N.J. 5 (1999) (one-year suspension for attorney who appeared before a New York court during his New Jersey suspension; in imposing only a one-year suspension, the Court considered a serious childhood incident that made the attorney anxious about offending other people or refusing their requests; out of fear of offending a close friend, he agreed to assist as "second chair" in the New York criminal proceeding; there was no venality or personal gain involved; the attorney did not charge his friend for the representation; prior admonition and three-month suspension); In re Wheeler, 140 N.J. 321 (1995) (Wheeler I) (two-year suspension imposed on attorney who practiced law while serving a temporary suspension for failure to refund a fee to a client; the attorney also made multiple misrepresentations to clients, displayed gross

neglect and pattern of neglect, engaged in negligent misappropriation and in a conflict of interest, and failed to cooperate with disciplinary authorities);⁶ In re Marra, 183 N.J. 260 (2005) (Marra II) (three-year suspension for attorney found guilty of practicing law in three matters while suspended; the attorney also filed a false affidavit with the Court stating that he had refrained from practicing law during a prior suspension; the attorney had received a private reprimand, a reprimand, two three-month suspensions, a six-month suspension, and a one-year suspension, also for practicing law while suspended); In re Cubberley, 178 N.J. 101 (2003) (three-year suspension for attorney who solicited and continued to accept fees from a client after he had been suspended, misrepresented to the client that his disciplinary problems would be resolved within one month, failed to notify the client or the courts of his suspension, failed to file the affidavit of compliance required by Rule 1:20-20(a), and failed to reply to the OAE's requests for information; the attorney had an egregious disciplinary history: an admonition, two

⁶ In that same Order, the Court imposed a retroactive one-year suspension on the attorney, on a motion for reciprocal discipline, for his retention of unearned retainers, lack of diligence, failure to communicate with clients, and misrepresentations.

reprimands, a three-month suspension, and two six-month suspensions); In re Wheeler, 163 N.J. 64 (2000) (Wheeler II) (attorney received a three-year suspension for handling three matters without compensation, with the knowledge that he was suspended, holding himself out as an attorney, and failing to comply with Administrative Guideline No. 23 (now R. 1:20-20) relating to suspended attorneys; prior one-year suspension on a motion for reciprocal discipline and, on that same date, two-year consecutive suspension for practicing while suspended); In re Walsh, Jr., 202 N.J. 134 (2010) (attorney disbarred in a default case for practicing law while suspended by attending a case conference and negotiating a consent order on behalf of five clients and making a court appearance on behalf of seven clients; the attorney was also guilty of gross neglect, lack of diligence, failure to communicate with a client, and failure to cooperate with disciplinary authorities during the investigation and processing of these grievances; the attorney failed to appear on an order to show cause before the Court; extensive disciplinary history: reprimanded in 2006, censured in 2007, and suspended twice in 2008); and In re Olitsky, 174 N.J. 352 (2002) (disbarment for attorney who agreed to represent four clients in bankruptcy cases after he was suspended, did not notify them that he was suspended from practice, charged clients for the prohibited

representation, signed another attorney's name on the petitions, without that attorney's consent, and then filed the petitions with the bankruptcy court; in another matter, the attorney agreed to represent a client in a mortgage foreclosure after he was suspended, accepted a fee, and took no action on the client's behalf; in yet another matter, the attorney continued to represent a client in a criminal matter after the attorney's suspension; the attorney also made misrepresentations to a court and was convicted of stalking a woman with whom he had had a romantic relationship; prior private reprimand, admonition, two three-month suspensions, and two six-month suspensions).

The cases in which a suspension of two or more years was imposed involved other infractions and often more serious disciplinary histories. Respondent's conduct is similar to that of the attorneys who received one-year suspensions. In Bowman, supra, during a period of suspension, the attorney maintained a law office where he met with multiple clients, represented clients in court, and served as planning board solicitor for two municipalities. Bowman had a prior three-month suspension. Special mitigating circumstances kept the suspension at the one-year level. In Lisa, supra, the attorney appeared before a New York court, while suspended in New Jersey. The Court considered significant personal issues in mitigation, as well as the fact

that the attorney did not charge the client, a friend, for the representation. Lisa had a prior admonition and a three-month suspension. Even in Marra I, supra, where the attorney was also guilty of substantial recordkeeping violations and had a significant disciplinary record -- a private reprimand, a reprimand, and a three-month suspension -- the attorney received only a one-year suspension. Finally, and more recently, the attorney in Brady, supra, represented three clients after being enjoined from the practice of law and failed to file a R. 1:20-20 affidavit following a temporary suspension. Brady, however, had overwhelming mitigating circumstances justifying a one-year retroactive suspension.

Here, respondent has the additional misconduct of gross neglect, conduct prejudicial to the administration of justice, and failure to cooperate with disciplinary authorities. His misconduct, especially the level of neglect displayed in Holmes-Williams' matter, and his dramatic lack of cooperation, is exceptionally more egregious than the conduct of other attorneys guilty of similar violations.

In aggravation, respondent failed to accept responsibility for his misconduct by blaming other people and various circumstances, and failed to report his New York discipline to authorities in New Jersey. Further, and more significantly, his

misconduct caused serious harm to his client, although the record lacks enough information to quantify that damage.


In mitigation, respondent has no history of discipline in New Jersey and only a prior admonition in New York. At the time of his suspension in 2010, respondent had practiced law in New York for sixty-four years. He previously served in the United States Navy and there is evidence that, over the years, he dedicated at least a portion of his law practice to serving indigent clients.

On balance, therefore, we determine that the appropriate quantum of discipline for respondent is a one-year prospective suspension. The record does not support the application of that discipline retroactively.

Vice-Chair Baugh and Member Boyer 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 Martin S. Streit
Docket No. DRB 17-275

Argued: October 19, 2017

Decided: January 30, 2018

Disposition: One-year Suspension

<i>Members</i>	One-year Suspension	Did not participate
Frost	X	
Baugh		X
Boyer		X
Clark	X	
Gallipoli	X	
Hoberman	X	
Rivera	X	
Singer	X	
Zmirich	X	
Total:	7	2



Ellen A. Brodsky
Chief Counsel