SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 18-138
District Docket No. XIV-2017-0551E

In The Matter Of

Annette Maria Oakley

An Attorney At Law

Decision

Argued: June 21, 2018

Decided: October 23, 2018

Eugene A. Racz 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), pursuant to R. 1:20-14(a)(4), based on respondent's one-year suspension by consent in Pennsylvania for violations of the Pennsylvania equivalent of RPC 1.3 (lack of diligence), RPC 1.4(b), (failure to keep the client reasonably informed about the status of a matter and

to promptly comply with reasonable requests for information), RPC 1.4(c) (failure to explain a matter to the extent reasonably necessary for the client to make informed decisions), RPC 4.1(a)(1) (truthfulness in statements to others), RPC 5.5(a)(1) (unauthorized practice of law), RPC 7.1(a) (making false or misleading communications about the attorney's services), RPC 7.5(a) (improper firm name, letterhead or other professional designation that violates RPC 7.1), RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation), and RPC 8.4(d) (conduct prejudicial to the administration of justice).

We determine to impose a censure.

Respondent was admitted to the New Jersey and Pennsylvania bars in 2003. She has no prior discipline in New Jersey.

Since September 12, 2016, respondent has been ineligible to practice law for failure to pay the annual attorney assessment to the New Jersey Lawyers' Fund for Client Protection (CPF), with prior periods of ineligibility in 2008, 2013, and 2014.

Effective October 27, 2014, October 27, 2015, and October 21, 2016, the Court ordered respondent ineligible for failure to comply with the Interest on Lawyers Trust Accounts program.

Finally, on November 17, 2014, November 16, 2015, and November 21, 2016, the Court ordered respondent ineligible for failure to fulfill her Continuing Legal Education obligations.

Respondent remains ineligible to date.

According to a May 4, 2017 joint petition between respondent and Pennsylvania disciplinary authorities, in 2006, Eugenia Jones, Charlene Jones, and Vernon Terrell (the clients) retained respondent to represent them in an Atlantic County lawsuit against Atlantic Home Builders (Atlantic) and Lawrence Isaacs. In 2007, respondent filed a complaint and, in 2009, obtained a $66,000 judgment against Atlantic.

On March 22, 2010, respondent filed papers in the Office of the Prothonotary for the Court of Common Pleas of Bucks County, Pennsylvania, to record the New Jersey judgment in Bucks County.

Respondent told her clients that Donegal Mutual Life Insurance Co. (Donegal) had provided liability coverage to Atlantic, and that she intended to "compel Donegal to satisfy the New Jersey judgment." After that filing, respondent failed to take any action to satisfy the New Jersey judgment.

Respondent's Pennsylvania law license expired on July 1, 2012, based on her failure to file the required 2012-2013 annual attorney fee form. She attributed this failure to her poor health at the time. Effective October 19,

2012, respondent was administratively suspended from the practice of law in Pennsylvania for failure to pay the annual attorney assessment.

On September 19, 2012, the Pennsylvania Attorney Registrar sent respondent a certified letter containing a copy of the suspension order, and documents regarding her compliance obligations. Respondent, however, failed to claim the certified mailing.

On October 26, 2012, the Attorney Registrar sent a similar letter to respondent by regular mail, which she received. Therefore, "sometime in November 2012, respondent knew that she had been administratively suspended."

Respondent acknowledged that Pa.R.D.E. 217(e) required her to file a verified Statement of Compliance upon her administrative suspension, and that she failed to do so.

Upon her suspension, respondent failed to inform her clients in the Atlantic litigation that she could no longer represent them. Moreover, from October 22, 2012 through March 5, 2013, and from September 30, 2013 through May 11, 2015, respondent was ineligible to practice law in New Jersey because she had either failed to annually register her IOLTA account with the New Jersey IOLTA Fund or to pay the annual fee to the CPF, or both. There is

no indication in the record that respondent practiced law in New Jersey while ineligible, or that she ever reactivated her Pennsylvania license.

In April 2014, the same three clients required respondent's services in a matter involving Cash One Corporation, which held a second mortgage on the property that was the subject of the Atlantic litigation. A Cash One employee, Carol Chase, told the clients that Cash One would accommodate certain of their needs if respondent furnished documentation that the mortgage debt would be satisfied from the New Jersey judgment proceeds.

Eugenia Jones asked respondent to provide that documentation and, on April 11, 2014, respondent sent Cash One an e-mail attaching a letter of even date. The letter was written on the following attorney letterhead:

ANNETTE M. OAKLEY, ESQUIRE
2015 S. 11th Street
PHILADELPHIA, PENNSYLVANIA 19148-2367
Voice: (215) 760-4049
Cell: (215) 250-2745
Fax: (888) 901-7049
AMO@AMOAKLEYLAW.COM

Annette M. Oakley, Esquire
Member of PA and NJ Bar

The letter was addressed to Chase, with a copy to each of the clients. Respondent admitted that her letterhead had been misleading, inasmuch as it indicated that her Pennsylvania and New Jersey licenses were active. In the

letter, respondent (1) acknowledged having spoken with Chase the previous day; (2) stated that she had obtained a $62,000 [sic] judgment against Atlantic in the Jones lawsuit; (3) informed Chase that Atlantic had liability coverage through Donegal; (4) stated that respondent would pursue Donegal for the New Jersey judgment in the Bucks County Court of Common Pleas; (5) informed Chase that Eugenia Jones, Charlene Jones, and Terrell authorized "direct payment in full" to Cash One from the judgment proceeds; and (6) represented to Chase that Cash One could expect payment in full by August 2014.

Respondent's letter contained two misrepresentations: (a) that she would pursue declaratory relief against Donegal in the Bucks County Court of Common Pleas to satisfy the New Jersey judgment; and (b) that Cash One could expect payment by August 2014.

In 2015, Chase inquired of respondent from time to time about the status of her pursuit, and when Cash One could expect payment. On July 20, 2015, respondent replied to Chase in an e-mail titled "Judgment Award – Jones," which stated that: (1) Chase should "trust" and "be patient" with respondent; (2) "the buck stops" with respondent, who would contact Chase shortly to complete the matter; and (3) respondent would have a date certain within thirty days.

Respondent conceded that her letter misrepresented that she would obtain payment of the New Jersey judgment "in a short period of time" and would provide Chase with a date certain for payment within thirty days.

In an affidavit in support of the consent motion, respondent acknowledged that, if the disciplinary matter had proceeded in due course, she could not have successfully defended against the charges. However, she urged the Pennsylvania disciplinary authorities to consider that, had her matter gone to a hearing, she would have testified that she told her three clients that she was administratively suspended, but did not make clear to them that it meant that she could no longer represent them.

On June 9, 2017, the Disciplinary Board of the Supreme Court of Pennsylvania approved the joint petition and consent to a one-year suspension. Thereafter, by order dated July 13, 2017, the Supreme Court of Pennsylvania suspended respondent for one year, effective thirty days from the order date.

On October 24, 2017, the United States District Court for the Eastern District of Pennsylvania suspended respondent on consent for one year.

According to the OAE, respondent violated the Pennsylvania equivalent of the following New Jersey Rules of Professional Conduct: RPC 1.3 for lacking diligence in the representation; RPC 1.4(b) and (c) for failing to adequately communicate with the clients to the extent necessary for them to

make informed decisions about the representation; RPC 5.5(a)(1) for practicing law while ineligible to do so for failure to pay the Pennsylvania annual attorney fee; RPC 7.1(a) and RPC 7.5(a) for her use of misleading attorney letterhead; RPC 8.4(c) for misrepresenting to her clients and to Cash One that she intended to pursue the New Jersey judgment and that Cash One could expect funds soon; and RPC 8.4(d) because her "unauthorized practice of law carried the potential of improperly affecting the course of the litigation."[1]

In mitigation, the parties cited respondent's lack of prior discipline in fifteen years at the bar, her cooperation with disciplinary authorities, and her remorse for her actions.

The OAE likened this matter to In re Crotty, 227 N.J. 50 (2016) and In re Lawrence, 170 N.J. 598 (2002), discussed below.

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

[1] The OAE did not address the RPC 4.1(a) violation.

> 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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> (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). In Pennsylvania, the standard of proof in attorney disciplinary

matters is the "evidence is sufficient to prove ethical misconduct if a preponderance of that evidence establishes the charged violation and the proof is clear and satisfactory." See Office of Disciplinary Counsel v. Kissel, 497 Pa. 467, 442 A.2d 217 (1982); Office of Disciplinary Counsel v. Duffield, 537 Pa. 485, 644 A.2d 1186 (1994); and Office of Disciplinary Counsel v. Surrick, 561 Pa. 167, 749 A.2d 441 (2000). We note that, in this matter, respondent stipulated, in Pennsylvania, both to her violations of the RPCs and the quantum of discipline to be imposed in that jurisdiction.

In 2009, respondent obtained a $66,000 judgment in New Jersey against her clients' builder, Atlantic. In March 2010, respondent filed the judgment in Pennsylvania in order to pursue a claim against Donegal, Atlantic's Pennsylvania insurance carrier. Thereafter, from April 2014 through a portion of 2015, she lacked diligence and failed to communicate important aspects of the matter to her clients, as they sought to collect on that judgment, violations of RPC 1.3, RPC 1.4(b), and RPC 1.4(c), respectively.

By continuing to practice law in Pennsylvania in the Atlantic litigation after her October 2012 administrative suspension, and by representing the clients in the ancillary Cash One matter, respondent engaged in the unauthorized practice of law, a violation of RPC 5.5(a).

Cash One held a mortgage on the clients' property and sought assurances that its mortgage would be paid from the Atlantic judgment proceeds. In written communications to her clients and to Cash One, respondent misrepresented that (1) she would pursue declaratory relief in Pennsylvania to enforce the judgement against Donegal, Atlantic's liability insurance carrier; and (2) Cash One could expect payment by August 2014. In a July 2014 e-mail to Cash One, respondent misrepresented to Cash One that, within thirty days, it could expect a date certain for payment. Respondent's actions in this regard violated RPC 8.4(c).

Respondent also acknowledged certain ethics violations in the Pennsylvania disciplinary proceedings that would be considered cumulative in New Jersey. The RPC 4.1(a) violation involved truthfulness in statements to others, and related solely to the misrepresentations in respondent's correspondence to Cash One, misconduct that has already been addressed by RPC 8.4(c), above. Therefore, we dismiss the RPC 4.1(a) charge as duplicative.

In the same vein, respondent admitted having violated RPC 7.1(a) and RPC 7.5(a) for using letterhead that falsely stated that she was licensed to practice law in Pennsylvania and New Jersey. She was so licensed. In fact, the only reference on her letterhead to her attorney status was the declaration

"Member of Pa and NJ Bar" – a true statement. Although respondent was administratively ineligible in both Pennsylvania and New Jersey when she sent letters on her attorney letterhead in this matter, that misconduct is more appropriately addressed by the RPC 5.5(a) finding, above. Therefore, we dismiss the RPC 7.1(a) and RPC 7.5(a) charges as inapplicable.

Finally, RPC 8.4(d) was implicated solely because respondent's "unauthorized practice of law carried the potential of improperly affecting the course of the litigation." There is, however, no evidence in the record to support a finding that the administration of justice actually was prejudiced. Thus, for lack of clear and convincing evidence of a violation, we dismiss that charge.

In summary, respondent is guilty of having violated RPC 1.3, RPC 1.4(b) and (c), RPC 5.5(a), and RPC 8.4(c).

In respect of the appropriate sanction, without more, lack of diligence and failure to communicate with the client will ordinarily yield an admonition. See, e.g., In the Matter of John David DiCiurcio, DRB 12-405 (July 19, 2013); In re Bush, 210 N.J. 182 (2012); and In the Matter of Rosalyn C. Charles, DRB 08-290 (February 11, 2009).

A reprimand is usually imposed for practicing law while ineligible, where, as here, 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); In re Jay, 210 N.J. 214 (2012) (attorney was aware of the ineligibility and practiced law nevertheless; prior three-month suspension for possession of cocaine and marijuana); and In re (Queen) Payton, 207 N.J. 31 (2011) (attorney practiced law while ineligible, was aware of her ineligibility, and had previously been admonished for violating the same RPC).

Likewise, misrepresentations to clients require the imposition of a reprimand. In re Kasdan, 115 N.J. 472, 488 (1989). A reprimand may still be imposed even where, as here, the misrepresentation is accompanied by other ethics infractions. See, e.g., In re Ruffolo, 220 N.J. 353 (2015) (attorney exhibited gross neglect and a lack of diligence by allowing his client's case to be dismissed and failing to take any steps to ensure its reinstatement, violations of RPC 1.1(a) and RPC 1.3; the attorney also violated RPC 1.4(b) by failing to promptly reply to the client's requests for status updates; finally, he misrepresented to the client that the matter was proceeding apace, and that he should expect a monetary award in the near future, a violation of RPC 8.4(c)) and In re Falkenstein, 220 N.J. 110 (2014) (attorney failed to comply with his client's request that he seek post-judgment relief (RPC 1.1(a) and RPC 1.3) and misled the client, with false stories, that he had filed an appeal (RPC

8.4(c)); the attorney believed the appeal had no merit; his failure to withdraw from the case violated RPC 1.16(b)(4); the attorney also continued to practice law, aware that he was ineligible to do so, a violation of RPC 5.5(a)).

In In re Crotty, 227 N.J. 50 (2016) (censure), the attorney lacked diligence and failed to communicate with his bankruptcy trustee client in two separate matters in New York. Crotty also made appearances in the New York State and federal courts, but was not licensed to practice law in either jurisdiction, thereby engaging in the unauthorized practice of law.

Crotty also misled third parties and courts that he was admitted to practice law in New York. He misrepresented to his supervising attorney and to the trustee, by silence, that the matters were proceeding, until the trustee learned otherwise, and made statements in documents filed with courts containing materially false information about his attorney status in New York, a demonstrated lack of candor to those tribunals, in violation of RPC 3.3(a)(1) and (5). Additionally, Crotty's letterhead contained false or misleading communications about himself, violations of RPC 7.1(a)(1) and RPC 7.5(a).

In In re Lawrence, 17 N.J. 598 (2002), the attorney received a three-month suspension (enhanced due to her default) for the unauthorized practice of law in New York, failure to communicate with the client, and lack of diligence. The attorney also charged an unreasonable fee and used misleading

letterhead that included a New York office address to lure a New York client into the representation, as Lawrence was ineligible to practice law in New Jersey at the time.

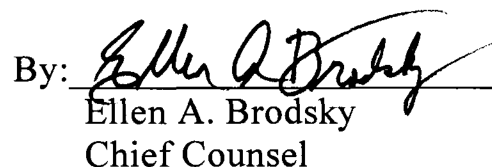
Here, in mitigation, we considered that respondent (1) has no prior discipline in fifteen years at the New Jersey bar; (2) cooperated fully with disciplinary authorities; and (3) expressed remorse for her actions.

Either of respondent's more serious infractions, standing alone — practicing law while knowingly ineligible or misrepresentations to clients/third parties — would warrant a reprimand. In light of respondent's flagrant lies to third party Cash One employee, Carol Chase, which were contained in two separate letters to her, we determine to impose a censure for the totality of respondent's misconduct. We so vote.

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

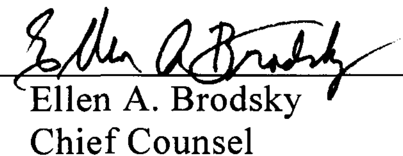
In the Matter of Annette Maria Oakley
Docket No. DRB 18-138

Argued: June 21, 2018

Decided: October 23, 2018

Disposition: Censure

Members	Censure	Recused	Did Not Participate
Frost	X		
Clark	X		
Boyer	X		
Gallipoli	X		
Hoberman			X
Joseph	X		
Rivera	X		
Singer	X		
Zmirich	X		
Total:	8	0	1



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