

Supreme Court of New Jersey
Disciplinary Review Board
Docket No. DRB 18-177
District Docket No. XIV-2017-0550E

In The Matter Of
Daniel W. McCartney, Jr.
An Attorney At Law

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Decision

Argued: July 19, 2018

Decided: November 27, 2018

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

Respondent did not appear, despite proper service.

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, pursuant to R. 1:20-14(a), filed by the Office of Attorney Ethics (OAE). The motion was based on respondent's unconditional resignation from the Pennsylvania bar

and subsequent August 4, 2017 disbarment.¹ On September 26, 2017, he was disbarred by consent in the United States District Court for the Eastern District of Pennsylvania.

On July 24, 2017, respondent submitted his unconditional resignation from the Pennsylvania bar, pursuant to Pa.R.D.E. 215 (Enforcement Rules), for multiple violations equivalent to New Jersey RPC 1.1(a) (gross neglect), RPC 1.2(a) (failure to abide by a client's decisions regarding the scope and objectives of the representation), RPC 1.3 (lack of diligence), RPC 1.4(b) (failure to keep a client reasonably informed about the status of a matter or to promptly comply with reasonable requests for information), RPC 1.4(c) (failure to explain a matter to the extent reasonably necessary to permit the client to make informed decisions about the representation), RPC 1.5(a) (unreasonable fee), RPC 1.15(a) (failure to safeguard funds), RPC 1.15(c) (failure to keep funds separate over which the lawyer and another claim interests until there is an accounting and severance of their interests); RPC 1.15(d) (recordkeeping violations); RPC 1.16(d) (failure to protect a client's

¹ Pa. Enforcement Rule 218(b) provides that a disbarred attorney may not apply for reinstatement until the expiration of at least five years from the effective date of the disbarment. However, if the order of disbarment contains a retroactivity clause, the waiting period is deemed to have begun on the earlier date.

interests on termination of the representation), RPC 3.3(a)(1) (false statement of material fact or law to a tribunal), RPC 3.4(a) (unlawfully obstructing another party's access to evidence); RPC 5.5(a) (unauthorized practice of law), RPC 8.4(b) (criminal conduct that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer), RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation), and RPC 8.4(d) (conduct prejudicial to the administration of justice).

Although the OAE recommends a one-year suspension, for the reasons expressed below, we determine that a two-year suspension is warranted.

Respondent was admitted to the New Jersey and Pennsylvania bars in 1995. At the relevant time, he maintained a law practice in Norristown, Pennsylvania. He has been administratively ineligible to practice law in New Jersey since August 24, 2015, for failure to pay the annual assessment to the New Jersey Lawyers' Fund for Client Protection. He has no history of discipline in New Jersey.

Respondent's resignation from the Pennsylvania bar acknowledged his receipt of multiple letters from the Pennsylvania Office of Disciplinary Counsel (PODC) requesting a statement of his position in pending complaints and investigations relating to his misconduct. Respondent acknowledged that the material facts contained in the PODC letters were true and that he

submitted his resignation from the bar because he could not successfully defend himself against the charges of professional misconduct set forth in those letters, Exhibits A through J, appended to his resignation. The facts set forth in these exhibits follow.

1. The Irene Wei Matter

On August 31, 2015, Irene Wei retained respondent to represent her in a collection matter, for which she paid him a \$2,000 retainer. On September 1, 2015, respondent filed an appeal from an arbitration award.

On February 10, 2016, following the issuance of a September 3, 2015 case management order and a January 29, 2016 settlement conference, respondent sent an e-mail request to move the trial from "March" to "May." The following day, opposing counsel objected to respondent's request.

On February 13, 2016, respondent e-mailed to Wei a copy of a motion for extraordinary relief, which requested a continuance of the trial to May 2016. Respondent represented to Wei that he had filed this motion on her behalf. The motion, however, was neither "accepted" nor docketed in the collection matter.

On February 29, 2016, opposing counsel informed respondent by e-mail that he had not yet received notice of respondent's filing for extraordinary

relief and, that when he checked with the court, he was informed "that the motion was not accepted as filed." He, therefore, understood that the court was not considering the motion. In fact, the court's March 1, 2016 e-mail to the parties indicated that the motion was neither accepted nor under consideration, and the case could be called for trial at any time.

Respondent never took corrective measures after the court notified him that the motion was not accepted or under consideration. He also failed to reply to Wei's requests for information about the re-scheduling of the trial. He then failed to appear for the March 8, 2016 trial. As a result, the judge vacated the appeal and reinstated the arbitration award in the amount of \$24,796.56, together with interest. Thereafter, opposing counsel filed a "Praecipe for Entry of Final Judgment against Defendants." Respondent failed to inform Wei of any of the above developments. In May 2016, the court informed Wei that her appeal had been dismissed due to her failure to appear at the trial. Thereafter, respondent failed to reply to Wei's telephone calls.

The PODC letter alleged violations of RPC 1.1(a), RPC 1.2(a), RPC 1.3, RPC 1.4(b), and RPC 1.4(c).

2. The Joei L. Kabatt Matter

On July 1, 2016, Joei Kabatt retained respondent to file a Chapter 7 bankruptcy petition, for which she paid him a \$1,550 retainer. According to the letter, the fee and costs, paid in advance, belonged to Kabatt. Respondent should have deposited the fee into his trust account, and should have withdrawn fees and expenses only when earned or incurred.

Kabatt wanted the petition filed quickly because she was concerned that Wells Fargo would repossess her car. On July 15, 2016, Wells Fargo did so.

After July 1, 2016, Kabatt made numerous e-mail and telephone requests to respondent for an update on the status of her case. On July 19, 2016, Kabatt hand-delivered a letter to respondent's office, expressing her concern that respondent had not yet filed her bankruptcy petition and requesting that he immediately contact her. In an August 15, 2016 letter to respondent, Kabatt detailed her unsuccessful efforts to communicate with him and requested that he provide her with a written status update on his efforts and an accounting of her retainer.

Notwithstanding respondent's receipt of both of Kabatt's letters, he neither communicated with her after July 1, 2016, nor filed the petition.

The PODC letter alleged violations of RPC 1.1(a), RPC 1.2(a), RPC 1.3, RPC 1.4(b), RPC 1.4(c), and RPC 1.15(a).

3. The Peggy Hill Matter

Respondent represented Peggy Hill in a Chapter 13 bankruptcy matter and in two civil litigation matters. Over the course of several months, Hill tried to communicate with respondent, including sending him two letters, in an attempt to ascertain the status of her matters. Respondent failed to reply to Hill.

The PODC letter alleged violations of RPC 1.2(a), RPC 1.4(b), and RPC 1.4(c).

4. The Mark A. Bauberger Matter

In June 2013, Mark Bauberger retained respondent to file a Chapter 7 bankruptcy petition, for which he paid a \$1,500 fee. Respondent informed Bauberger that he would delay filing the petition until Bauberger's criminal case was resolved, which occurred in May 2016. When Bauberger met with respondent in June 2016, respondent assured Bauberger that he would file the petition electronically, "in the near future."

Subsequently, on numerous occasions, Bauberger asked respondent for the file number for his bankruptcy matter. In a November 2, 2016 letter, Bauberger complained to respondent about his inattention and lack of response.

In a November 11, 2016 conversation "outside" of respondent's office, respondent represented to Bauberger that his office had filed the bankruptcy petition and that he would call Bauberger later that day. Respondent did not call him.

On November 14, 2016, when the two again spoke "outside" of respondent's office, respondent instructed Bauberger to telephone him later that day and represented that he would provide the file number at that time. When Bauberger called, respondent did not answer his phone.

On November 21, 2016, respondent sent a text message to Bauberger promising to send the case number for his bankruptcy matter, but, as of December 7, 2016, he had not provided Bauberger with a file number or any documentation in connection with the bankruptcy matter. Respondent never filed a petition on Bauberger's behalf.

The PODC letter alleged violations of RPC 1.1(a), RPC 1.2(a), RPC 1.3, RPC 1.4(b), RPC 1.4(c), RPC 1.5(a) and RPC 8.4(c).

5. The Amy N. Feldmann Matter

In October 2016, Amy and John Feldmann retained respondent to file a Chapter 13 bankruptcy petition, for which they paid him a \$2,315 retainer, by

check number 1203. The retainer represented an advanced fee payment, "belonging to Mrs. Feldmann and constituted Rule 1.15 funds."

On November 10, 2016, respondent negotiated the check. The PODC letter "averred" that respondent did not deposit the check into a trust account "to be withdrawn" as his fee was earned and that he, therefore, converted Amy Feldmann's retainer.

In a December 5, 2016 e-mail to John Feldmann, respondent apologized for his delay in replying, and blamed it on both an illness and a trial that was to "wrap up" that week.² He maintained that he would provide "everything" to the Feldmanns within a day or so for their review. Respondent made a false representation to John Feldmann that he had been on trial.

Thereafter, respondent did not reply to John Feldmann's December 12, 2016 e-mail asking how the information would be sent and when respondent would be available to talk. John Feldmann further requested that respondent be "straight" with them, and inform them if he were unable to prepare the petition, so they could make other arrangements.

Respondent also failed to reply to the Feldmanns' follow up voicemail messages on December 13, 14, 15, and 23, 2016, or John Feldmann's

² The record contains no information in respect of the Feldmanns' requests for information, but presumably the "delay in replying" related to such requests.

December 15, 2016 e-mail, requesting a status update or a refund of the check respondent had cashed on November 10, 2016.

In a December 27, 2016 e-mail, Amy Feldmann notified respondent that she had conferred with two other attorneys, who confirmed that respondent had not filed the Feldmanns' bankruptcy petition; that she did not want respondent to file it, as she would be retaining other counsel; that she wanted respondent to "overnight" a refund of her retainer; and that she had filed an ethics "complaint" against him. By letter dated March 17, 2017, she requested an accounting of the retainer and the immediate return of any unearned portion of it.

Respondent did not reply to the e-mail or the letter; did not communicate with the Feldmanns after December 5, 2016; neither provided them with an accounting nor refunded the advance payment of the fee; and never filed the bankruptcy petition on the Feldmanns' behalf.

The PODC letter alleged violations of RPC 1.1(a), RPC 1.2(a), RPC 1.3, RPC 1.4(b), RPC 1.4(c), RPC 1.15(a), RPC 1.15(b), RPC 1.16(d), RPC 8.4(b), and RPC 8.4(c).

6. Non-client Related Offenses

a. Criminal conduct

On June 20, 2016, respondent entered into a guilty plea to a charge of driving while under the influence (DUI). He never reported the conviction to the PODC, a violation of RPC 8.4(b) and RPC 8.4(d) and of various enforcement rules.

b. Practicing while administratively suspended and related violations

Respondent failed to complete his Pennsylvania attorney registration and failed to submit payment of his annual fee for 2016-2017, despite having received nine e-mail reminders and a postcard reminder that he was required to do so. The Supreme Court of Pennsylvania, therefore, administratively suspended respondent, effective November 4, 2016. He also failed to timely file a verified statement of compliance in connection with his suspension. Despite his administrative suspension, on November 4, 2016, respondent was listed as the attorney of record for parties in twenty cases and performed legal services for those clients during his suspension.

Respondent failed to notify his clients of his administrative suspension; to move for leave to withdraw from the cases; to notify the court, opposing counsel, and his clients of his suspension; and to timely withdraw his appearance after the effective date of his suspension.

Although on December 5, 2016, the Pennsylvania Attorney Registration unit received respondent's statement of compliance, the statement did not comply with the requirements of Pa.R.D.E. 217(b) and (e)(1) because respondent failed to attach the required notices. Nevertheless, he certified that the statements contained therein were true and correct, and contained no misrepresentations or omissions of material fact. Respondent knew that the statement was false.

The PODC letter alleged violations of RPC 5.5(a), RPC 8.4(b), RPC 8.4(c), and RPC 8.4(d).

c. Failure to abide by court order and contempt of court

On November 21, 2016, the court scheduled a pretrial conference for December 2, 2016. When respondent appeared, he informed the judge that he was ready to proceed for trial on December 5, 2016, knowing the statement to be false because he was aware of his administrative suspension and ineligibility to represent his client.

On the morning of trial, prior to the call of the client's case, respondent falsely informed the judge that (1) he had learned on the afternoon of December 2, 2016 of his administrative suspension for failure to pay his annual licensing fee; and (2) "Attorney Registration" had informed him that his license would be restored on the morning of December 5, 2016.

Because respondent was ineligible to practice law, the judge continued the trial and released the assembled forty-person jury panel. Thereafter, respondent's license was restored. The judge issued a "rule" to show cause why respondent should not be held in contempt, returnable January 6, 2017. Although respondent received the order to show cause, he failed to appear at the scheduled contempt hearing. Respondent also failed to return the court's telephone calls.

By order dated January 10, 2017, the judge held respondent in contempt for lack of candor to the court; directed him to pay a fine within thirty days; and warned that his failure to timely pay the fine could result in a warrant for his arrest.

At a January 20, 2017 pretrial conference, respondent acknowledged his receipt of the order, and stated that he would comply with it, and that he wanted to try to negotiate a "global deal" for his client's outstanding criminal matters. The judge, thus, scheduled another pretrial conference for the client's matter on January 27, 2017, at which respondent failed to appear. The judge, therefore, granted the client's request to remove respondent as his counsel.

Respondent did not comply with the judge's order and did not report to the PODC that he had been held in contempt.

The PODC letter alleged violations of RPC 3.3(a)(1), RPC 8.4(b), RPC 8.4(c), and RPC 8.4(d), and various enforcement rules.

7. Recordkeeping Violations

By letter dated October 25, 2016 to respondent, the PODC noted that the Pennsylvania Lawyers Fund for Client Security (Fund) had forwarded a September 1, 2016 letter to him, requesting an explanation and documentation relating to two shortages in his Wells Fargo Bank IOLTA/Attorney Trust Account, which resulted when two checks had been presented for payment against that account. Respondent did not reply. Therefore, by letter dated September 21, 2016, the Fund noted respondent's failure to reply to the earlier request for information and enclosed three additional negative balance notifications from the bank, again requesting a written, documented explanation for the overdrafts. The letter cautioned that respondent's failure to produce the information would result in an immediate referral to the PODC.

The PODC's letter requested that, within ten days after personal service of its letter, respondent submit various records mandated by Pa. RPC 1.15(c)³ for his Wells Fargo Bank IOLTA/Attorney Trust account.

On September 28, 2016, respondent sent an e-mail indicating that he would submit his documented response the following day. Thereafter, respondent had no further communications with the Fund.

In addition to the foregoing, respondent had not filed an annual "fee form" for the 2016-2017 year.

8. Failure to promptly deliver funds to third party entitled to receive them

Respondent represented Andrea Callahan in a personal injury matter. Bridgeway Legal Funding (Bridgeway), a funding company, provided pre-settlement funds to Callahan. Respondent signed an agreement requiring that he protect Bridgeway's interest and deposit any settlement funds in an escrow or a trust account until Bridgeway's lien was satisfied. Respondent failed to inform Bridgeway when Callahan's case settled, failed to disburse any funds to Bridgeway, and failed to communicate with Bridgeway, despite the company's numerous telephone calls, faxes, e-mails, and letters to him. Ultimately, the

³ This Pennsylvania RPC appears to be equivalent to New Jersey RPC 1.15(d) (recordkeeping). However, the OAE did not charge a violation of that RPC.

company learned of the settlement from respondent's client's insurance claim adjuster.

9. Neglect and failure to communicate in bankruptcy matter

Finally, respondent represented Sheila and Larry Thomas in a Chapter 13 bankruptcy matter. He failed to appear in court for scheduled hearings, and failed to communicate with the clients.

* * *

Recognizing that respondent admitted the allegations of "extensive misconduct," the OAE maintained that R. 1:20-14(a)(4)(E) applies and that respondent's disbarment in New Jersey is not warranted. Rather, the OAE suggested that a one-year suspension is sufficient discipline for respondent's pattern of accepting clients, despite his knowledge that he was administratively ineligible to do so; abandoning five clients; and engaging in gross neglect, pattern of neglect, and other violations.

The OAE cited, as a mitigating factor, respondent's lack of an ethics history in New Jersey. In aggravation, the OAE noted respondent's failure to report his unconditional resignation in Pennsylvania to the OAE, as R. 1:20-14(a)(1) requires.

We determine to grant the OAE's motion for reciprocal discipline. Pursuant to R. 1:20-14(a)(5), "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." 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, "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 his violations of the RPCs and the quantum of discipline to be imposed.

Reciprocal disciplinary 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 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.

Based on the record in this matter, subsection (E) applies. The record clearly and convincingly establishes that respondent could not defend against the charges against him and, therefore, he admitted violating the New Jersey equivalents of multiple RPCs listed or invoked in the PODC letters A-J, specifically, RPC 1.1(a), RPC 1.3, RPC 1.4(b), RPC 1.4(c), RPC 1.16(d), RPC 3.3(a)(1), RPC 5.5(a), RPC 8.4(b), RPC 8.4(c), and RPC 8.4(d).

We determine, however, to dismiss RPC 1.2(a), RPC 3.4(a), RPC 1.5(a), and RPC 1.15(a). In our view, RPC 1.2(a) is superfluous and is subsumed in the other ethics charges. In addition, we can discern no basis in fact on which to sustain a finding of a violation of RPC 3.4(a). Next, although respondent was charged in Pennsylvania with a violation of RPC 1.5(a) (unreasonable fee) in the Bauberger matter, that charge appears to have been based on

respondent's failure to return to his client the unearned retainer, which is more appropriately captured by RPC 1.16(d). Finally, the RPC 1.15(a) charge appears to be based on respondent's failure to deposit his clients' retainer fee and advanced costs in his trust account and to then draw on those funds only after they had been earned or expenses incurred, violations of Pennsylvania RPCs 1.15(b) and 1.15(i). We dismiss the RPC 1.15(a) charge because our Rules do not require an attorney to hold retainers and advanced costs in a trust account until earned or incurred, unless there is a specific agreement to the contrary. Although respondent's failure to disburse funds to Bridgeway might have supported a charge of a violation of RPC 1.15(b) (failure to promptly disburse funds to a third party), that Rule was not charged, and, therefore, we may not find a violation of RPC 1.15(b). See R. 1:20-4(b).

Although all of respondent's violations are egregious, abandoning clients, practicing law while ineligible, and making misrepresentations to the court rank among his most serious violations.

Abandonment of clients almost invariably results in a suspension, the duration of which depends on the circumstances of the abandonment, the presence of other misconduct, and the attorney's disciplinary history. See, e.g., In re Nwaka, 178 N.J. 483 (2004) (three-month suspension, on a motion for reciprocal discipline, for attorney who was disbarred in New York for

abandoning one client and failing to cooperate with New York ethics authorities by not filing an answer to the complaint and not complying with their requests for information about the disciplinary matter; prior three-month suspension); In re Jennings, 147 N.J. 276 (1997) (three-month suspension for abandonment of one client and failure to cooperate with ethics authorities; no disciplinary history); In re Bowman, 175 N.J. 108 (2003) (six-month suspension for abandonment of two clients, misrepresentations to disciplinary authorities, pattern of neglect, and misconduct in three client matters, including gross neglect, lack of diligence, failure to communicate with clients, failure to explain a matter to the extent reasonably necessary to permit the client to make an informed decision about the representation, failure to provide a written fee agreement, failure to protect a client's interests upon termination of representation, and misrepresenting the status of a matter to a client; prior private reprimand); In re Pierce, 193 N.J. 298 (2007) (one-year suspension for attorney who abandoned a client by receiving a fee, performing no services and then unilaterally terminating the representation when evicted from her office; the attorney also lacked diligence in the representation and failed to return the unearned fee to the client; the attorney had received two prior reprimands); In re Diamond, 185 N.J. 171 (2005) (one-year suspension for attorney who, in three matters involving two clients, abandoned the clients and

engaged in gross neglect, pattern of neglect, lack of diligence, failure to communicate with clients, failure to promptly deliver funds to a client or third person, failure to withdraw from the representation where the lawyer's physical or mental condition materially impairs the lawyer's ability to represent the client, and failure to reply to requests for information from a disciplinary authority; the attorney failed to appear at the continuation of the DEC hearing; he suffered from alcohol and drug abuse and had a prior admonition and reprimand); In re Bowman 178 N.J. 25 (2003) (one-year suspension, in a default matter, for attorney who abandoned four clients; other violations included gross neglect, pattern of neglect, lack of diligence, failure to communicate with clients, failure to protect clients' interests on unilateral termination of representations, communicating about the subject of the representation with a person the lawyer knew or should have known to be represented by another lawyer in the matter, failure to adopt and maintain reasonable efforts to ensure that the conduct of nonlawyer employee is compatible with the professional obligations of the attorney, failure to properly supervise nonlawyer employee, failure to cooperate with disciplinary authorities, and misrepresentation of the status of a matter; the attorney's ethics history included a private reprimand, a temporary suspension, and two six-month suspensions); and In re Mintz, 126 N.J. 484 (1992) (two-year

suspension for attorney who abandoned four clients and was found guilty of a pattern of neglect, failure to maintain a bona fide office, and failure to cooperate with ethics authorities). But see In re Hughes, 183 N.J. 473 (2005) (reprimand for attorney who abandoned one client by closing his practice without informing the client or advising her to seek other counsel; altogether, the attorney mishandled three matters by exhibiting a lack of diligence, failure to communicate with clients, and failure to protect his clients' interests upon termination of the representation; strong mitigating factors considered).

Practicing law while ineligible is generally met with an admonition if the attorney is either unaware of the ineligibility or advances compelling mitigating factors. Neither of these factors is present here. Thus, typically a reprimand or a censure is imposed when aggravating factors exist. See, e.g., In re Moskowitz, 215 N.J. 636 (2013) (reprimand for attorney who was ineligible to practice for approximately seven months, and was aware of his ineligibility when he appeared for trial in an estate matter and filed various pleadings with the court; the mitigating factors offered by the attorney were not sufficiently compelling to reduce the discipline); In re (Queen) Payton, 207 N.J. 31 (2011) (reprimand for attorney who was aware of her ineligibility and who practiced law, nevertheless; prior admonition for the same violation); In re Austin, 198 N.J. 599 (2009) (reprimand; during a one-year period of ineligibility, the attorney made three court appearances on behalf of an

attorney-friend who was not admitted in New Jersey and received a \$500 fee for each matter; the attorney knew he was ineligible; he also did not maintain a New Jersey trust or business account, but misrepresented on his annual registration form that he did); In re Glasser, 222 N.J. 26 (2015) (censure in a default for attorney who represented a client in an immigration matter while ineligible for failure to pay the annual assessment for seven years (her license had been administratively revoked), failed to memorialize the basis or rate of the fee, failed to adequately communicate with the client, failed to take any action in the case, failed to return the file and the retainer, and failed to reply to the district ethics committee's several requests for a reply to the grievance); and In re Block, 220 N.J. 33 (2014) (censure in a default for attorney who knowingly practiced law while ineligible by representing clients in three different municipal courts; he also failed to reply to the grievance, despite having been afforded a number of extensions to do so; knowledge of the ineligibility was inferred based on a number of factors, including the attorney's failure to pay the annual assessment for five years; prior reprimand for the same violation).

This case is somewhat comparable to In re Mandale, 227 N.J. 222 (2016). Mandale, who was disbarred in Pennsylvania, received a one-year suspension in New Jersey, on a motion for reciprocal discipline for multiple ethics violations. Unlike this respondent, however, Mandale failed to participate in the Pennsylvania ethics

proceedings against him. In the Matter of Michael Z. Mandale, DRB 15-389 (August 16, 2016) (slip op. at 2-3).

Although Mandale had been administratively suspended in Pennsylvania for failure to file his annual registration statement and failure to pay the annual license fee, he continued to hold himself out as eligible to practice law and engaged new clients for an entire year, despite his ineligibility. Id. at 15-16.

Mandale failed to complete five matters for which he had been retained; failed to exercise diligence; failed to provide clients with information on the status of their matters, and to promptly reply to requests for information; failed to provide a client with a writing communicating the basis or rate of the fee; failed to maintain clients' and his own funds separate; and failed to return unearned fees to clients. Mandale also improperly deposited his own funds into his trust account; engaged in the unauthorized practice of law in multiple matters; failed to abide by the Pennsylvania order of suspension, which was deemed to be conduct prejudicial to the administration of justice; and failed to cooperate with Pennsylvania ethics authorities. Id. at 16.

The Pennsylvania Disciplinary Board considered, as a significant aggravating factor, Mandale's disregard for the disciplinary system and "lack of interest in his law license," specifically, his failure to participate in the disciplinary proceedings. Pennsylvania, therefore, disbarred him to protect the public. Id. at 20.

In determining to impose a one-year suspension, we weighed the above aggravating factor, as well as the harm Mandale caused his clients, against mitigating factors: during oral argument before us, he maintained that he had reimbursed his former clients, and expressed remorse for his conduct. In addition, we considered his previously unblemished record and his self-reporting of his discipline to the OAE. Mandale's appearance in person to express his remorse suggested to us that he had an interest in maintaining his license to practice law, and that "he may be able to do so in accordance with the standards of our profession." Id. at 21.

As of the date of this decision, respondent has shown no interest in maintaining his New Jersey license. Moreover, he failed to notify the OAE of his Pennsylvania disbarment, an aggravating factor. This case is further distinguishable from the Mandale matter because respondent knew he had no defenses to the grievances/complaints filed against him set forth in Exhibits A through J to Exhibit A.

In sum, respondent abandoned between five and seven clients; (2) failed to report his DUI guilty plea; (3) knowingly practiced law while ineligible; (4) knowingly made misrepresentations to a judge resulting in serious consequences (the dismissal of the jury panel among other consequences); (5) violated a judge's order and was held in contempt of court; (6) failed to communicate with his clients; and (7) engaged in gross neglect, pattern of neglect, and lack of diligence.


Thus, in comparison to the Mandale matter (one-year suspension), the aggravating factors and respondent's seeming lack of interest in continuing to practice law in New Jersey requires greater discipline. Moreover, respondent is guilty of additional RPC violations not found in Mandale – making a false statement of material fact to a tribunal, and criminal conduct.

Based on the foregoing, we determine that a two-year suspension is the appropriate quantum of discipline in this case. We further determine to require that respondent be reinstated in Pennsylvania prior to seeking reinstatement in New Jersey.

Vice-Chair Clark and Members Joseph and Singer voted for a two-year suspension, but would not require respondent's reinstatement in Pennsylvania as a condition of a petition for reinstatement in New Jersey. Member Gallipoli voted to recommend that respondent be disbarred. 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

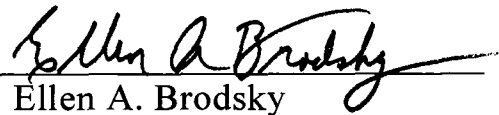
In the Matter of Daniel W. McCartney, Jr.
Docket No. DRB 18-177

Argued: July 19, 2018

Decided: November 27, 2018

Disposition: Two-Year Suspension

<i>Members</i>	Two-Year Suspension	Disbar	Recused	Did Not Participate
Frost	X			
Clark	X			
Boyer				X
Gallipoli		X		
Hoberman	X			
Joseph	X			
Rivera	X			
Singer	X			
Zmirich	X			
Total:	7	1	0	1


Ellen A. Brodsky
Chief Counsel