

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 18-191
District Docket No. XIV-2017-0648E

In The Matter Of

Mark David Johns

Attorney At Law

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Decision

Argued: September 20, 2018

Decided: November 28, 2018

Johanna Barba Jones 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 disbarment in Pennsylvania for violations of the Pennsylvania equivalents of RPC 1.3 (lack of diligence), RPC 1.4(c) (failure to explain a matter to the extent reasonably necessary for the client to make informed

decisions about the representation), RPC 1.5(b) (failure to set forth in writing the rate or basis of the attorney's fee), RPC 1.16(d) (failure to return an unearned retainer or client file upon termination of the representation), RPC 5.5(a) (practicing law while suspended), RPC 7.1(a) (making false or misleading communications about the lawyer, the lawyer's services, or any matter in which the lawyer has or seeks a professional involvement), 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 three-year suspension.

Respondent was admitted to the New Jersey bar in 2001 and the Pennsylvania bar in 2000. Effective May 21, 2018, the Supreme Court suspended respondent for three months in a reciprocal discipline matter originating in Pennsylvania. In two client matters, respondent was found guilty of gross neglect and pattern of neglect, lack of diligence, failure to communicate, failure to return an unearned retainer and client file, and making repeated misrepresentations to the two clients. In re Johns, 233 N.J. 79 (2018).

The relevant facts are contained in a July 12, 2017 document titled Report and Recommendations of the Disciplinary Board of the Supreme Court of Pennsylvania (Pennsylvania Board).

By order dated December 30, 2014, the Supreme Court of Pennsylvania suspended respondent for a period of one year and one day for misconduct in the matter that resulted in his reciprocal three-month suspension in New Jersey, above.

By letter dated December 31, 2014, the Pennsylvania disciplinary authorities transmitted a certified copy of the suspension order to respondent, along with forms for his completion in order to comply with Pennsylvania's rules governing suspended attorneys. Respondent failed to comply with any of the requirements of the December 31, 2014 letter, and has remained suspended since January 30, 2015, the effective date of the Pennsylvania suspension order.

On May 23, 2016, the Pennsylvania Office of Disciplinary Counsel filed a Petition for Discipline, charging respondent with numerous ethics violations, including practicing law while suspended in Pennsylvania. Respondent was personally served with the petition, but failed to file an answer.

Although respondent was informed of the date and time of a subsequent pre-hearing conference and disciplinary hearing, he failed to appear at either event. On September 8, 2016, the hearing took place in his absence. Two witnesses for the petitioner testified briefly about the case, as seen below.

On January 5, 2017, the Pennsylvania hearing committee filed its report, concluding that respondent had violated the Pennsylvania Rules as charged in the petition, which were deemed admitted based on his failure to file an answer, in effect, a default. The committee recommended respondent's disbarment.

After an independent review, the Pennsylvania Board concluded that, after the January 30, 2015 effective date of respondent's Pennsylvania suspension, he closed his post office box in Horsham, Pennsylvania, which had served as his official attorney address, and failed thereafter to notify the Pennsylvania authorities of his new address. Moreover, court records, opposing counsel, and former clients confirmed that respondent continued to practice law in Pennsylvania after January 30, 2015, at least through January 2016. As late as September 8, 2016, the date of the Pennsylvania disciplinary hearing, respondent continued to advertise on social media.

While suspended, respondent failed to withdraw his appearance in pending court matters, and accepted new clients. He also held himself out as an attorney in good standing "to judges, court personnel, the district attorney assigned to each case, and his clients" by: (a) using his law firm letterhead and law firm e-mail address when communicating about the cases listed in the petition; (b) using his law firm letterhead when filing pleadings, summary

appeals, motions, and entering his appearance; (c) appearing in court for guilty pleas, ARDs,¹ sentencing proceedings, and trials; (d) providing legal advice to clients; (e) engaging in negotiations with district attorneys; (f) receiving payment for legal services; and (g) continuing to handle client funds.

In respect of charge one of the petition, the Pennsylvania Board found that, from February 2 through June 23, 2015, respondent represented clients in four matters in various Bucks County, Pennsylvania courts.

Specifically, in Com. v. Lucas Lefever, a Magisterial District Court case, respondent negotiated a guilty plea for Lefever, advised him to accept it, and represented him in the entry of an April 3, 2015 guilty plea. In Com. v. Candace Caye Morris Bourke, a Court of Common Pleas matter, respondent represented Bourke in an application for ARD, appeared with his client before the ARD court on March 31, 2015, and again for sentencing before the Honorable Diane E. Gibbons on May 7, 2015. In Com. v. Robert Lockharte Bacon, III, in the Court of Common Pleas, respondent provided legal advice to Bacon and represented him for trial listings in February and March 2015. Thereafter, respondent failed to withdraw his appearance, even after Bacon's subsequent counsel entered his appearance on March 18, 2015. In Com. v.

¹ "ARD" refers to Pennsylvania's Accelerated Rehabilitative Disposition program, a diversionary program for first-time criminal offenders.

Bernard Gillespie, a Magisterial District Court matter, respondent negotiated a guilty plea, provided legal advice to Gillespie about the plea offer, and appeared with his client before the Honorable Frank W. Peranteau, Sr., on February 2, 2015, for the entry of the guilty plea.

Respondent also represented two clients in the Lancaster County Court of Common Pleas while suspended. In Com. v. Thomas L. Quattrini, respondent represented Quattrini in a summary appeal, negotiated a guilty plea, provided legal advice to Quattrini about the plea, and appeared with his client before the Honorable David L. Ashworth for the February 18, 2015 entry of a guilty plea and for sentencing. In Com. v. Barton A. Ruffin, respondent represented Ruffin in a summary appeal that respondent had filed on February 18, 2015, and appeared with Ruffin for the May 20, 2015 trial before the Honorable James P. Cullen.

In addition, during his suspension, respondent represented three clients in Montgomery County, Pennsylvania courts. In Com. v. Patricia Anne Silvestri, a Court of Common Pleas matter, respondent represented Silvestri in a summary appeal, advised her about and negotiated a guilty plea, and appeared with his client before the Honorable Wendy Demchick-Alloy for the February 19, 2015 entry of a guilty plea and sentencing. In Com. v. Harry Siegfried, Jr., a Magisterial District Court matter, respondent represented

Siegfried before the Honorable Harry J. Nesbitt at a February 11, 2015 same-day trial continuance, and at a June 23, 2015 summary trial.² In Com. v. Jack Lowenthal, a Court of Common Pleas matter, respondent represented Lowenthal in a summary appeal, and requested several trial continuances through June 2015.

Respondent also represented Hector L. Navarro Perez in a summary appeal in the Northampton County Court of Common Pleas. In that case, respondent filed a February 20, 2015 application for a trial continuance, accepted a March 25, 2015 trial attachment, and then failed to appear for trial.

In respect of charge two of the petition, George Maykranz retained respondent to represent him in connection with a driving under the influence matter in the Somerset County Court of Common Pleas. After respondent's January 30, 2015 suspension, he continued to represent Maykranz, communicated with Assistant District Attorney Hannah Myers, and negotiated with her for a plea agreement.

Thereafter, on February 10, 2015, respondent held himself out as Maykranz' attorney to Myers, court personnel, his client, and President Judge

² At the disciplinary hearing, Siegfried testified that he paid respondent \$500 to represent him for a traffic ticket, but respondent neither appeared on the scheduled court date nor refunded the \$500 retainer.

John M. Cascio, who accepted Maykranz' guilty plea. Respondent failed to inform any of those individuals that he had been suspended from the practice of law.

On April 27, 2015, respondent appeared with Maykranz for sentencing before Judge Cascio. After sentencing, when ascertaining respondent's address for the court reporter, Myers learned that he had been suspended from the practice of law, and immediately informed Judge Cascio.

As a result of respondent's having misled the court, the District Attorney's Office, and his own client about his standing as an attorney, Judge Cascio held a hearing, on May 7, 2015, at which he vacated Maykranz' guilty plea and sentence.

Charge three of the petition involved respondent's representation of Annette Burgos, who retained him in September 2014 in connection with a divorce action pending in the Lehigh County Court of Common Pleas. Although Burgos paid respondent an \$850 flat fee that day for the representation, respondent failed to set forth the basis or rate of his fee in writing, as required.

After accepting Burgos' fee, respondent performed no legal services, failing to even enter an appearance in her divorce action. On January 28, 2015, two days before the effective date of his suspension, he told Burgos, without

explanation, that he could not represent her. She immediately requested the refund of her fee, to which respondent agreed. In subsequent e-mails, respondent promised to return the funds, but never did.

In respect of charge four of the petition, Robert B. Christiansen retained respondent in 2012, by oral agreement, to represent him in a divorce action in the Bucks County Court of Common Pleas. For the next three years, until January 2015, respondent took little action to advance his client's case. On January 9, 2015, however, he provided Christiansen with a draft settlement proposal for equitable distribution. Respondent neither informed his client about his upcoming January 30, 2015 suspension, nor advised Christiansen to retain a new attorney.

By letter to respondent dated April 22, 2015, Tina Mazaheri, Esq. sought to obtain Christiansen's client file and respondent's signature on a Praecipe for Entry and Withdrawal of Appearance in the matter. On April 23, 2015, Mazaheri's paralegal left respondent a voicemail message for that purpose.

The next day, April 24, 2015, Mazaheri sent respondent another letter reiterating her earlier requests. This time, respondent returned a signed withdrawal of appearance, but failed to produce Christiansen's client file.

On May 4, 2015, Mazaheri sent respondent a third letter recapping her earlier attempts to obtain the client file from him, and warning respondent that

she would contact ethics authorities if he failed to turn over the client's file. Nevertheless, respondent did not return the file.

The Pennsylvania Board found respondent guilty of violations of the following Pennsylvania Rules: Pa RPC 1.3; RPC 1.4(b); RPC 1.5(b); RPC 1.15(i); RPC 1.16(a)(1); RPC 1.16(d); RPC 5.5(a); RPC 5.5(b)(1); RPC 5.5(b)(2); RPC 7.1; RPC 8.4(c); RPC 8.4(d); Pa.R.D.E. 203(b)(3); Pa.R.D.E. 203(b)(7); Pa.R.D.E. 217(a); Pa.R.D.E. 217(b); Pa.R.D.E. 217(c)(2); Pa.R.D.E. 217(c)(3); Pa.R.D.E. 217(d); Pa.R.D.E. 217(e); Pa.R.D.E. 217(i); Pa.R.D.E. 217(j)(4); and Pa.R.D.E. 219(e). The Pennsylvania Board did not specify which findings applied to the individual client matters.

In its report, the Pennsylvania Board discussed respondent's default, pointing out that he had "made no effort to comply with the Suspension Order," and "did not participate in the formal proceedings against him, despite having been personally served with the Petition for Discipline and having received notice of the prehearing conference and the disciplinary hearing." Moreover, respondent had accepted no responsibility for his misconduct, and showed no remorse or regard for the integrity of the legal system.

When considering respondent's disbarment, the Pennsylvania Board characterized his misconduct as follows:

[t]he instant matter is an extremely egregious occurrence of the unauthorized practice of law. Petitioner established that for at least one year, Respondent, a suspended attorney, unabashedly continued to practice law across the Commonwealth, from Somerset County in the western part of the state to Northampton County in the northeast portion of the state, as if he had never been suspended. As a result of Respondent's deceitful behavior, Respondent tricked dozens of clients into retaining him, only to provide substandard or no service.

Respondent had multiple opportunities to cooperate with the disciplinary system, before and after he was served with the Petition and the hearing notices. He chose to disregard all communications with Petitioner and absented himself from the hearing process. Respondent's Actions evidence a complete disdain for the Court's authority and the disciplinary process.

[OAEbEx.D,20-21.]³

On September 6, 2017, the Supreme Court of Pennsylvania ordered respondent's disbarment.

The OAE cited several cases in support of a one-or two-year suspension, ultimately likening this case to In re Wheeler, 140 N.J. 321 (1995), where the attorney received a two-year suspension. Wheeler continued to practice law while temporarily suspended, failed to return an unearned fee, made

³ "OAEb" refers to the May 24, 2018 OAE brief in support of the motion for reciprocal discipline.

misrepresentations to clients, engaged in gross neglect and a pattern of neglect, and failed to cooperate with ethics authorities.

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

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

The Board shall recommend imposition of the identical action or discipline unless the Respondent demonstrates, or the Board finds on the face of the record upon 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.

None of the exceptions in subsection (A) through (D), above, apply. In respect of subsection (E), respondent's Pennsylvania misconduct would not warrant disbarment in New Jersey.

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).

After respondent was suspended in Pennsylvania, effective January 30, 2015, he continued to practice law unabated, in numerous courts, throughout the Commonwealth. He was aware of his suspension, but lied to courts, clients, and adversaries alike that he was an attorney in good standing.

Respondent both continued representing current clients whose matters pre-dated the suspension, and accepted new clients during his suspension. In a total of thirteen matters documented in the petition, respondent accepted legal fees and performed little or no work on his clients' matters, after having been suspended for one year and one day.⁴ He retained unearned fees, and failed to

⁴ The truncated facts in the Burgos and Christiansen matters do not expressly state facts that respondent continued to practice law in those matters after the January 30, 2015 effective date of his suspension. It is unclear, thus, whether the Pennsylvania Board found him guilty of practicing law while suspended in those two instances.

provide his clients with important information that was necessary for them to make informed decisions about the legal matters in his care.

As of September 8, 2016, the hearing date of respondent's disciplinary matter and almost two years after he was suspended, respondent's law practice was still advertised on social media – a false and misleading communication about his status as an attorney and about his ability to provide the advertised legal services. Finally, respondent's actions were prejudicial to the administration of justice in numerous courts in Pennsylvania, not the least of which occurred in the Maykranz matter, where Judge Cascio was compelled to vacate the defendant's guilty plea and sentence as a result of respondent's misconduct in his court.

In all, we find that respondent violated the Pennsylvania equivalents of New Jersey RPC 1.3, RPC 1.4(c), RPC 1.5(b), RPC 1.16(d), RPC 5.5(a), RPC 7.1(a), RPC 8.4(c), and RPC 8.4(d).

By far, respondent's most serious misconduct was his brazen, continued practice of law after the Supreme Court of Pennsylvania suspended him for one year and one day – a suspension from which respondent has never been reinstated.

The level of discipline for practicing law while suspended ranges from a lengthy suspension to disbarment, depending on the existence of other

misconduct, the attorney's disciplinary history, and aggravating or mitigating factors. See, e.g., In re Phillips, 224 N.J. 274 (2016) (one-year suspension for attorney who stipulated that, while suspended, he had secured consent to an adjournment of a matrimonial motion that was to be heard during the term of suspension, and had assisted the client in the matter; extensive prior discipline, including a prior admonition, two censures, and a three-month suspension); In re Brady, 220 N.J. 212 (2015) (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; in addition, the attorney appeared in municipal court on behalf of a third client, after the Supreme 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 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 an unspecified number of clients, represented them 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 attorney who practiced law in two cases while suspended and committed 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; prior 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; no venality or personal gain were involved; the attorney did not charge his friend for the representation; prior admonition and three-month suspension); In re Hollis, 154 N.J. 12 (1998) (attorney suspended for one year in a default matter for continuing to represent a client during his period of suspension; the attorney had been suspended for three years on two occasions; no reasons given for only a one-year 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 situation, and failed to cooperate with disciplinary authorities)⁵; 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

⁵ 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.

had an egregious disciplinary history: an admonition, two 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 Kasdan, 132 N.J. 99 (1993) (three-year suspension for attorney who continued to practice law after being suspended and after the Court expressly denied her request for a stay of her suspension; she also failed to inform her clients, her adversary and the courts of her suspension, deliberately continued to practice law, misrepresented her status as an attorney to adversaries and to courts where she appeared, failed to keep complete trust records, and failed to advise her adversary of the whereabouts and amount of escrow funds; prior three-month suspension); In re Beltre, 130 N.J. 437 (1992) (three-year suspension for attorney who appeared in court after having been suspended, misrepresented his status to the judge, failed to carry out his responsibilities as an escrow agent, lied to us about maintaining a bona fide office, and failed to cooperate with an ethics investigation; prior three-month

suspension); 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 the 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); 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); In re Costanzo, 128 N.J. 108 (1992) (attorney disbarred for practicing law while serving a temporary suspension for failure to pay administrative costs incurred in a prior disciplinary matter and for misconduct involving numerous matters, including gross neglect, lack of diligence, failure to keep clients reasonably informed and to explain matters in order to permit them to make informed decisions about cases, pattern of neglect, and failure to designate hourly rate or basis for fee in writing; prior private reprimand and reprimand); and In re Goldstein, 97 N.J. 545 (1984) (attorney disbarred for misconduct in eleven matters and for practicing law while temporarily suspended by the Court and in violation of an agreement with this Board that he limit his practice to criminal matters).

For respondent's additional, less serious misconduct, in In re Masciocchi, 208 N.J. 406 (2011), a reprimand was imposed for a combination of violations similar to those of respondent. Masciocchi grossly neglected and engaged in a pattern of neglect in four client matters, and failed to communicate with the clients. In two of the matters, he sent letters to the clients misrepresenting to them the relative exclusivity of his representation. He also misrepresented to the OAE that he had arranged for attorney coverage in one of the matters. In a fifth matter, Masciocchi failed to set forth in writing the rate or basis of his fee or to return the unearned portion of the fee.

As to the only remaining violation not captured in any of the above cases, conduct prejudicial to the administration of justice comes in a variety of forms, but the discipline imposed for that misconduct typically results in at least a reprimand. See, e.g., In re Cerza, 220 N.J. 215 (2015) (attorney failed to comply with an order requiring him to produce subpoenaed documents in a bankruptcy matter, a violation of RPC 3.4(c) and RPC 8.4(d); he also exhibited a lack of diligence and failed to promptly turn over funds to a client or third person, violations of RPC 1.3 and RPC 1.15(b)) and In re Gellene, 203 N.J. 443 (2010) (attorney found guilty of conduct prejudicial to the administration of justice and knowingly disobeying an obligation under the rules of a tribunal for failing to appear on the return date of an appellate court's order to show cause and failing to notify the court that he would not appear; the attorney was also guilty of gross neglect, pattern of neglect, lack of diligence, and failure to communicate with clients; mitigating factors considered were the attorney's financial problems, his battle with depression and significant family problems; two prior private reprimands and an admonition).

None of the above suspension cases is an exact fit for respondent's unauthorized practice of law. The one-year suspension cases, Phillips, Lisa, and Hollis, involved attorneys who practiced law in just one matter, while suspended. Brady involved three client matters. Bowman, also a one-year

suspension case, involved multiple client matters, but the ethics complaint in that case did not specify how many clients and matters were involved. In re Bowman, DRB 06-003 (May 25, 2006) (slip op. at 4).

In Wheeler I, a two-year suspension case, the attorney "undertook, albeit wrongfully, to assist an individual in a single matter over a very limited period of time." Wheeler I, DRB 93-162 and 94-094 (April 12, 1995) (slip op. at 27). Like respondent, Wheeler also neglected his clients, failed to return an unearned fee, made misrepresentations to clients, and failed to cooperate with ethics authorities.

The three-year suspension cases, Marra II, Cubberley, and Wheeler II, involved attorneys with extensive prior discipline, who practiced law in one to three client matters while suspended.

Only Kasdan, and Beltre, also three-year suspension cases, involved attorneys who, like respondent, had a prior three-month suspension. Kasdan practiced law while suspended in two matters, while Beltre did so in just one matter.

Walsh, a disbarment case, involved five to seven clients, and similar ancillary misconduct to that of respondent, such as client neglect, failure to communicate with clients, and the like. Walsh, however, had significant prior discipline, an element not present here, as respondent has only a three-month

suspension in New Jersey. Similarly, in Olitsky, another disbarment case, the attorney practiced law while suspended in four matters, but possessed an extraordinary record of prior discipline, which is not the case here.

This case is somewhat like the disbarment cases, Costanzo and Goldstein, for the presence of numerous instances of practicing while suspended, similar ancillary violations, and less egregious disciplinary histories. However, those cases date from 1992 and 1984, respectively, and are too remote in time to establish precedent for such a harsh sanction today.

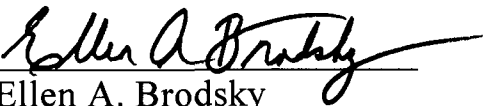
The Pennsylvania authorities considered respondent's misconduct and subsequent default before them so intolerable as to pronounce it "an extremely egregious occurrence of the unauthorized practice of law" evidencing "a complete disdain for the Court's authority and the disciplinary process." While we agree with that sentiment, we determine to impose a sanction just shy of disbarment — a three-year suspension.

Vice-Chair Clark and Member Joseph voted for a one-year suspension. Member Gallipoli voted for disbarment.

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 Mark D. Johns
Docket No. DRB 18-191

Argued: September 20, 2018

Decided: November 28, 2018

Disposition: Three-Year Suspension

<i>Members</i>	Three-Year Suspension	One-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:	5	2	1	0	1


Ellen A. Brodsky
Chief Counsel