

Supreme Court Of New Jersey
Disciplinary Review Board
Docket No. DRB 18-255
District Docket No. XIV-2017-0654E

In The Matter Of
Christopher D. Boyman
An Attorney At Law

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Decision

Decided: January 11, 2019

To the Honorable Chief Justice and Associate Justices of the Supreme Court of New Jersey.

This matter was before us on a certification of the record filed by the Office of Attorney Ethics (OAE), pursuant to R. 1:20-4(f). A two-count complaint charged respondent with violations of RPC 3.3(a)(1) (false statement of material fact to a tribunal), RPC 5.5(a), R. 1:20-20(b)(1) and R. 1:20-20(b)(11) (practicing law while suspended), RPC 8.1(b) (failure to cooperate with an ethics investigation), and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation).

We determine to recommend respondent's disbarment.

Respondent was admitted to the New Jersey bar in 1987. In 2010, he was censured, on a certified record, for misconduct in two matters. In one matter, he was found guilty of gross neglect, lack of diligence, and failure to communicate with his client. In the other matter, he was found guilty of gross neglect and lack of diligence in connection with two collection matters. He also entered into an improper business transaction with the client and failed to return the client's file. He failed to cooperate with disciplinary authorities in both matters. In re Boyman, 201 N.J. 203 (2010).

In 2012, respondent was temporarily suspended, effective February 6, 2012, for failure to pay the assessed disciplinary costs in connection with his censure matter. In re Boyman, 209 N.J. 2 (2012). He remains suspended to date.

On May 16, 2014, respondent received a second censure, also in a default, for his failure to file the R. 1:20-20 affidavit required of all suspended attorneys. In re Boyman, 217 N.J. 360 (2014).

In a third default, on December 6, 2018, the Court suspended respondent for three years, effective January 4, 2019, based on his continued practice of law while suspended for more than four years, from May 9, 2012 to August 24, 2016, in at least nineteen client matters involving loan transactions that

exceeded \$23 million. In re Boyman, N.J. (2018) In the Matter of Christopher D. Boyman, DRB 18-085 (August 22, 2018).

Service of process was proper in this matter. On June 8, 2018, the OAE sent a copy of the complaint by certified and regular mail to respondent's home address as listed in the attorney registration records. The certified mail receipt was returned, having been signed by "C. Boyman" on July 6, 2018. The regular mail was not returned.

On July 9, 2018, the OAE sent a second letter to respondent, to the same home address, also by regular and certified mail, informing him that, if he did not answer the complaint within five days of the date of the letter, the allegations of the complaint would be deemed admitted; that, pursuant to R. 1:20-4(f) and R. 1:20-6(c)(1), the record in the matter would be certified directly to us for imposition of sanction; and that the complaint would be amended to include a charge of a violation of RPC 8.1(b). United States Postal Service tracking records indicate successful delivery of the certified mail on July 12, 2018. The regular mail was not returned.

The time within which respondent may answer the complaint has expired and, as of February 26, 2018, he had not filed an answer. Thus, the OAE certified the record to us as a default.

The facts alleged in the complaint are as follows.

As previously noted, the Court issued an Order temporarily suspending respondent from the practice of law, effective February 6, 2012. Respondent has remained suspended since that date.

On November 13, 2017, the OAE received a referral from the Committee on the Unauthorized Practice of Law. Richard J. Weber, Esq., the attorney for Jeffrey and Cathryn Gonyo, reported that respondent had served Weber's clients with various documents, seeking to collect a debt arising from a \$517,942 construction contract involving their property in Maplewood, New Jersey.

Specifically, on October 13, 2017, respondent sent the Gonyos a letter, indicating that he represented Forst Contracting & Development Corporation. The letterhead identified respondent as "CHRISTOPHER D. BOYMAN, Attorney at Law," and his e-mail address as "cdblaw@comcast.net." Respondent attached a Demand for Arbitration; a Notice and Instructions to Claimant, which he signed as Forst Contracting's "General Counsel;" and a Notice of Unpaid Balance and Right to File Lien. On the latter document, respondent witnessed Robert J. Forst's signature as an "Attorney At Law."

Thereafter, on October 27, 2017, respondent sent an e-mail to Weber, using the designation "Christopher Boyman, Esq." Respondent attached to the

e-mail a letter to Weber using respondent's attorney letterhead, accompanied by copies of several invoices from Forst Contracting to the Gonyos.

On October 30 and November 2, 2017, respondent sent Weber additional e-mails, discussing details of the case, referencing his "client," and seeking a location for an upcoming arbitration hearing in the case.

According to count one of the complaint, respondent's actions violated RPC 3.3(a)(1), RPC 5.5(a)(1), and Rule 1:20-20(b)(1), which states that "an attorney who is suspended shall not practice law in any form and shall not appear as an attorney before any court," and RPC 8.4(c).

Finally, the complaint heading for count one lists a violation of R. 1:20-20(b)(11), which addresses a suspended attorney's obligation to notify clients and others of the suspension. The complaint, however, contains no facts alleging respondent's failure to notify clients of his suspension.

According to count two of the complaint, on December 18, 2017, the OAE sent to respondent a letter, by certified and regular mail, enclosing a copy of the grievance, and requiring a written reply by January 2, 2018. On January 17, 2018, the OAE received the certified mail return receipt indicating delivery on December 29, 2017, having been signed by "C. Boyman."

On February 8, 2018, the OAE sent respondent a second letter, again requesting his reply to the grievance and warning that his failure to cooperate

with ethics authorities would subject him to discipline for violation of RPC 8.1(b). On February 26, 2018, the OAE received the certified return receipt indicating delivery, no date given, having been signed by "C. Boyman."

As of June 4, 2018, the date of the ethics complaint, respondent had not replied to the grievance, a violation of RPC 8.1(b).

The facts recited in the complaint support some, but not all, of the charges of unethical conduct. Respondent's failure to file an answer is deemed an admission that the allegations of the complaint are true and that they provide a sufficient basis for the imposition of discipline. R. 1:20-4(f)(1). Nevertheless, each charge must contain sufficient facts to support a finding of unethical conduct.

In October 2017, when he was temporarily suspended, respondent represented Forst Contracting in a collection matter involving a \$517,942 construction contract for the Gonyos' property in Maplewood, New Jersey. In furtherance of the representation, in October and early November, 2017, respondent sent several letters to the Gonyos and their attorney, enclosing copies of the contract, invoices, and documents that he drafted in aid of the debt collection.

In DRB 18-085, we determined to impose a three-year suspension on respondent for similar misconduct, noting that, after respondent's receipt of the

grievance alleging that he practiced law while suspended, OAE Assistant Ethics Counsel Timothy J. McNamara contacted respondent, on June 27, 2017, to discuss that grievance. Respondent acknowledged receipt of several OAE letters requesting his written reply to that grievance, gave no reason for his failure to reply, and told McNamara that he understood the charges against him and was consulting an attorney. Respondent practiced law while suspended in that matter for more than four years, from May 9, 2012 to August 24, 2016, in at least nineteen matters that exceeded \$23 million in value. In the Matter of Christopher D. Boyman, DRB 18-085 (August 22, 2018) (slip op. at 7.)

Clearly, respondent was well aware, after speaking with McNamara, that practicing law while suspended is a very serious matter. Yet, in this matter, just months after that June 2017 discussion with the OAE, respondent accepted Forst Contracting's October 2017 representation and pursued the collection of a debt. In so doing, respondent violated RPC 5.5 and R. 1:20-20(b)(1).

The complaint, however, contained no facts to support the allegation that respondent made false statements to a tribunal. Thus, for lack of clear and convincing evidence, we dismiss the RPC 3.3(a)(1) charge. Although one might argue that respondent engaged in conduct violating RPC 8.4(c) by holding himself out as an attorney while he was suspended, we need not address that violation, in light of his other misconduct requiring disbarment.

In addition, the heading of count one of the complaint listed R. 1:20-20(b)(11), which requires a suspended attorney to notify existing clients, adversaries in pending matters, and the assignment judge/clerk of court in any pending matter. Yet, the complaint contains no facts supporting respondent's failure to notify clients and others of the suspension. Finally, respondent's misconduct - practicing while suspended – has been adequately addressed by RPC 5.5(a)(1), above. Therefore, we dismiss the R. 1:20-20(b)(11) charge for lack of clear and convincing evidence.

Finally, respondent received, from the OAE, letters dated December 18, 2017 and February 8, 2018, requiring his written reply to the grievance. Respondent ignored those requests for information, in violation of RPC 8.1(b).

In sum, respondent is guilty of having violated RPC 5.5(a)(1) and R. 1:20-20(b)(1), and RPC 8.1(b).

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, 220 N.J. 212 (2015) (one-year retroactive suspension imposed on attorney who, after a Superior Court judge had restrained him from practicing law, and after the Court had temporarily suspended him, represented two clients in municipal court, and appeared in a

municipal court on behalf of a third client; 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 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 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 caused the attorney to become 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 was 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, engaged in gross neglect and a pattern of neglect, negligent misappropriation, and a conflict of interest situation, and failed to cooperate with disciplinary authorities);¹ In re Marra, 183 N.J. 260 (2005) (three-year suspension for attorney found guilty of practicing law in three matters while suspended; the attorney also filed an affidavit with the Court falsely 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 received

¹ 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.

an admonition, two reprimands, a three-month suspension, and two six-month suspensions); In re Wheeler, 163 N.J. 64 (2000) (Wheeler II) (three-year suspension for attorney who handled three matters without compensation, with the knowledge that he was suspended, held himself out as an attorney, and failed 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, a 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 also was 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); 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 action 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); and In re Costanzo, 128 N.J. 108 (1992) (attorney disbarred for practicing law while serving a temporary suspension for failure to pay assessed disciplinary costs incurred in a prior disciplinary matter; in a total of nine predominately bankruptcy matters, the attorney was guilty of 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 set forth in writing the rate or basis of his fee; in the nine client matters, the attorney took legal fees and performed little or no work, misrepresented to the clients that he was pursuing their claims, in violation of RPC 8.4(c), and then abandoned those clients; prior private reprimand and reprimand).

As seen in Brady, Bowman, and Lisa, the threshold discipline for practicing law while suspended is a one-year suspension.

Here, however, respondent allowed this matter to proceed by way of default. "A respondent's default or failure to cooperate with the investigative authorities operates as an aggravating factor, which is sufficient to permit a penalty that would otherwise be appropriate to be further enhanced." In re Kivler, 193 N.J. 332, 342 (2008).


Moreover, respondent was on notice of our August 22, 2018 decision in DRB 18-085, a recommendation for a three-year suspension for identical misconduct when he elected to default here – for the fourth consecutive time. More significantly, only three or four months after respondent's telephone conversation with OAE counsel in which respondent acknowledged that he understood the charges against him in that case (which included practicing while suspended), respondent engaged in the same misconduct.

Respondent's misconduct in this fourth default is as defiant an example of practicing law while suspended as we have seen. For respondent's demonstrated disdain for the attorney discipline system and his license to practice law, we conclude that he must be disbarred.

Member Joseph 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 Christopher D. Boyman
Docket No. DRB 18-255

Decided: January 11, 2019

Disposition: Disbar

<i>Members</i>	Disbar	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


Ellen A. Brodsky
Chief Counsel