Supreme Court Of New Jersey
Disciplinary Review Board
Docket No. DRB 18-282
District Docket No. XIV-2016-0291E

In The Matter Of

William John Bowe

An Attorney At Law

Decision

Argued: October 18, 2018

Decided: January 24, 2019

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

Robert A. Weir, Jr. appeared on behalf of respondent.

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

This matter was before us on a recommendation for a six-month suspension filed by the District IX Ethics Committee (DEC). The two-count complaint charged respondent with violations of RPC 1.15(a) (failure to safeguard funds – commingling personal and client funds), RPC 1.15(d)

(recordkeeping violations), RPC 5.5(a) (unauthorized practice of law), RPC 8.4(b) (criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer),[1] RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation),[2] and RPC 8.4(d) (conduct prejudicial to the administration of justice).

For the reasons expressed below, we determine that respondent not be permitted to appear pro hac vice in any New Jersey matters, until further Order of the Court and, should he apply for readmission, his readmission is to be withheld for a period of one year. We further determine to require the OAE to refer respondent's conduct to Illinois disciplinary authorities.

Respondent was admitted to the New Jersey bar in 1984. He has no history of discipline. However, respondent's license was administratively revoked, on August 18, 2014, pursuant to R. 1:28-2(c), based on his failure to pay his annual attorney registration fee for seven consecutive years. Although respondent was admitted to practice in Illinois in 1982, according to the Attorney Registration and Disciplinary Commission of the Supreme Court of

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[1] N.J.S.A. 2C:21-22 provides that a person is guilty of a crime of the fourth degree if the person knowingly engages in the unauthorized practice of law.

[2] At the DEC hearing, the Office of Attorney Ethics (OAE) moved to dismiss the charged violation of RPC 8.4(c), relating to the certification respondent filed in support of his petition for readmission.

Illinois' website, respondent is not authorized to practice, based on his failure to demonstrate "required MCLE compliance." The website further indicates "Last Registered Year: 2007."

The stipulated facts and testimony at the DEC hearing establish that respondent's failure to pay the annual assessment to the New Jersey Lawyers' Fund for Client Protection (Fund) for seven consecutive years and to report his change of address to the OAE or to the Fund, resulted in the Court's Order administratively revoking his license to practice law. Respondent asserted that he was unaware of the revocation. However, even after the OAE provided him with notice of it, he continued to practice law for several months.[3]

By way of background, at the time of the DEC hearing, respondent was sixty-five years old. Prior to becoming an attorney, he was a civil engineer. He began his legal career in Chicago, as in-house counsel for an engineering firm. Thereafter, he worked for two large corporations before joining the law firm of Giordano, Halleran & Ciesla, where he was employed for ten years. Subsequently, he and two other attorneys from that firm formed the law firm of Bowe, Caruso & Epstein, which dissolved in 2000. From approximately

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[3] Although respondent's misconduct occurred subsequent to the revocation of his license in New Jersey, we have jurisdiction pursuant to RPC 8.5(a). See In the Matter of Robin L. French, DRB 15-296 (May 31, 2016) (Slip op. at 8-13); In re French, 226 N.J. 593 (2016).

2003 to early 2007, respondent practiced law at a firm located at Two Bridge Avenue, Red Bank, New Jersey, and registered that address with the Fund. After working in two other firms, including the firm of Bowe & Fernicola, also in Red Bank, respondent began working as a solo practitioner in April 2008. Respondent failed to notify the Fund or the OAE of his new address as R. 1:20-1(c) requires.[4]

At the relevant time, respondent maintained trust and business accounts at Bank of America. On May 6, 2016, the bank notified the OAE of an overdraft in respondent's trust account. Thereafter, by letter dated May 11, 2016, the OAE directed respondent to provide a written explanation for the overdraft. The letter further notified him that, on August 18, 2014, his license to practice law had been administratively revoked.

On May 25, 2016, respondent submitted a reply to the OAE. Thereafter, on June 23, 2016, the OAE conducted a demand interview/audit of respondent's books and records, which revealed the following recordkeeping

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[4] This Rule provides, in relevant part, that every attorney admitted to practice in this state, "shall, on or before February 1, of every year, or such other date as the Court may determine, pay the annual fee and file a registration statement with the [Fund]. . . . Each lawyer shall file with the Fund a supplemental statement of any change in the attorney's billing address and shall file with the [OAE] a supplemental statement of any change in the home address and the address of the primary law office as required by Rule 1:21-1(a) . . . ."

violations: (1) failure to perform three-way trust account reconciliations; (2) failure to maintain bank account cash receipts and disbursements journals; (3) inactive balances in the trust account; (4) personal funds relating to his mother's estate commingled with trust account funds; and (5) failure to maintain a client ledger card identifying attorney funds designated for bank charges; violations of RPC 1.15(a), RPC 1.15(d), and R. 1:21-6.

Respondent asserted that, after he left the Bowe & Fernicola firm, he thought he had so informed the Fund, but "obviously" had not done so because he did not receive any further communications from the Fund. He maintained that all of the Fund's notices had been sent to his prior law firm address.

Respondent stipulated that he did not file his annual attorney registration statements or pay his annual assessment to the Fund from 2008 to 2014. He asserted that he recalled filling out the attorney registration documents after his office address changed and thought that his business manager had mailed in the forms, "[b]ut, obviously," unbeknownst to him, that had not occurred. When asked whether he realized that, "at some point," he had not paid his fee or taken required continuing legal education courses, he replied, "I completely suppressed it. Did I know? I guess yes, subconsciously. But consciously I just suppressed it and pushed forward."

Respondent maintained that, from 2008 through 2013, he suffered a financial setback. Specifically, his house went into foreclosure and he was struggling financially to keep his house and maintain a staff, whom he ultimately dismissed. He ignored notices from the Fund, from the Internal Revenue Service, and from his mortgage company. As a result of his problems, he began drinking excessively. In 2013 and 2014, he sought counseling to address his depression.

According to the stipulation, in May 2014, the Fund notified respondent that he had been on the ineligible list since 2008 and that, if he did not rectify his ineligibility, his license to practice law would be administratively revoked. Respondent did not file the registration forms or pay his cumulative assessments before the August 22, 2014 deadline. Therefore, on August 18, 2014, the Court entered an Order, effective August 25, 2014, administratively revoking respondent's license to practice law, a copy of which was sent to his last known office address. The revocation also was published in the August 25, 2014 New Jersey Law Journal. Respondent maintained that, as a cost-cutting measure, he had canceled all of his subscriptions and, therefore, did not receive the New Jersey Law Journal.

As noted previously, on May 11, 2016, the OAE notified respondent that his license had been revoked. He took no immediate action to remedy the revocation. Indeed, he continued to practice law. At the June 23, 2016 OAE demand audit, respondent informed the OAE that he was currently representing two clients in commercial real estate transactions. Respondent's bank statements and bills to his clients confirmed that he continued to provide legal services, even after the OAE audit. Thereafter, respondent did not reply to the OAE's multiple calls seeking information on the steps he planned to take to obtain the restoration of his license.

In respect of the trust account overdraft, respondent maintained that, in 2016, he had mistakenly issued a trust account check from the wrong sub-account, resulting in an overdraft in another subaccount. Although he resolved the problem immediately, his bank notified the OAE of a trust overdraft, resulting in OAE's inquiry. Respondent maintained that he was not aware of the problem with his license until the OAE informed him about it.

Respondent claimed that, at the time he learned about his license revocation, he had only two long-term clients, both of whom were involved in complex real estate developments in Woolwich Township. He had performed services for two-and-one-half or three years on five separate, complex related applications for the clients. Respondent maintained that it would have taken

another attorney months to review the clients' matters if he had withdrawn his services and, therefore, he believed that he owed his clients a duty to complete their applications. Moreover, he was certain that, if he had withdrawn, his clients would have sued him for malpractice. He eventually closed his practice, effective September 1, 2016, after he concluded matters for the two clients.

Respondent admitted that he engaged in the unauthorized practice of law, which continued for five months after the OAE's initial notification that his license had been revoked, and for three months after the June 23, 2016 demand audit/interview. Respondent, thus, continued to practice law with full knowledge that his license had been revoked.

According to respondent, he cooperated fully with the OAE, has paid the past due assessments, and filed a motion to be reinstated, which was denied.[5] In the interim, he amassed more than ninety credits of continuing legal education in substantive law and more than thirty ethics credits.

Respondent claimed that he had received treatment from a counselor in 2013 and 2014, and met with a counselor from the Lawyers' Assistance Program. Although during the period in question, he suffered from depression,

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[5] According to respondent's counsel, respondent's application for readmission was denied by the Court, pending the resolution of the ethics proceedings, at which time he may seek reconsideration of the Court's Order.

he "pushed through it." Respondent's certification to the Court in connection with his petition for reinstatement averred that he had long suffered from alcoholism and depression. His financial troubles led to his "resumption" of excessive alcohol consumption and repetitive bouts of depression.

Currently, respondent serves as the project manager for one of the clients for whom he had been completing the aforementioned real estate transactions. He maintains that his responsibilities are non-legal.

Respondent submitted four character letters, three from clients and one from co-counsel to a client. The letters described respondent as upstanding, professional, fair, compassionate, ethical, articulate, loyal, competent, knowledgeable, of good character, a close friend and confidant, and uniquely qualified to understand complex development issues because of his background in engineering and law. In his own behalf, respondent maintained that he is not a bad person. Rather, he tried to put his clients' interests first, sometimes to the detriment of his family.

The DEC determined that respondent was an experienced attorney, "quite aware" of his requirement to pay the annual assessment to the Fund. The DEC found that respondent's failure to do so for eight years was not a mere oversight or an unintentional error. The DEC, thus, remarked that respondent's denial of knowledge of his ineligibility "rings hollow."

The DEC was troubled by respondent's continued practice of law after receiving the OAE's letter notifying him of his license revocation. It wrote:

> Respondent attempts to justify or excuse this conduct by alleging that, as a result of his long-term and intimate knowledge of the substance of the Woolwich Township application, he was the only attorney who could represent the client successfully and bring the matter to a conclusion. The Hearing Panel rejects Respondent's excuse or justification. The Panel deems these justifications to be mere self-aggrandizement on the part of Respondent. Certainly there were other means available to Respondent to ensure that his client would be adequately represented at the Woolwich Township Board hearings. Respondent purposely chose to ignore the revocation of his license.
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> [HR4.][6]

The DEC considered respondent's mitigating circumstances: his significant alcohol problem during the relevant period; treatment with an "unnamed" therapist for emotional disorders; and significant financial stresses during the time, including facing foreclosure of his home. Although the DEC found respondent's testimony credible on these issues, it emphasized respondent's failure to present any corroborating evidence. Thus, the DEC concluded that it was unable to adequately address the "extent" of the impact of these factors and, therefore, declined to accept them as mitigation.

[6] HR refers to the July 28, 2018 hearing panel report.

The DEC did consider, in mitigation, that respondent had an unblemished disciplinary history since his admission in 1984, that he acknowledged his wrongdoing, that he cooperated with the OAE, and that he immediately corrected the problem with his trust account overdraft.

In aggravation, the DEC considered respondent's failure to comply with his registration obligations and payment of the annual assessment for an extended period of time. The DEC did not find credible respondent's assertion that he had no notice of his administrative ineligibility. It found that, "[a]s an experienced attorney, it can be inferred that [he] simply ignored his financial and reporting requirements."

The DEC found that respondent's continued practice of law after his license was administratively revoked was more serious than practicing while administratively ineligible. The DEC compared his conduct to that of the attorney in In re Torrellas, 213 N.J. 597 (2013). In that case, the Court ordered that, if the attorney applied for readmission, his readmission would be withheld for a period of six months.[7] The DEC found respondent's conduct to be more serious than that of Torrellas because, although Torrellas also

[7] The DEC erroneously stated that Torrellas received a three-month suspension.

continued to practice after his license was administratively revoked for failure to pay the annual attorney assessment, he denied having received notice of the revocation. Here, respondent continued to practice law even after the OAE notified him of his license revocation.

The DEC found respondent guilty of violating RPC 1.15(a), RPC 1.15(d), RPC 5.5(a), RPC 8.4(b), and RPC 8.4(d).[8] Based on these factors, the DEC recommended a six-month suspension, to "run prospectively to his reinstatement as a licensed attorney."

Following a de novo review of the record, we are satisfied that the conclusion of the DEC that respondent was guilty of unethical conduct is fully supported by clear and convincing evidence.

Respondent stipulated to violating all of the RPCs charged in the ethics complaint, with the exception of RPC 8.4(c). As noted previously, the OAE moved to dismiss that violation. The RPC 8.4(c) allegations related to respondent's certification in support of his petition for reinstatement. In that certification, respondent did not affirmatively disclose that the OAE had

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[8] Although the hearing panel did not specifically address the RPC 1.15(a) charge, in its report, the hearing panel noted that respondent had admitted all of the allegations of the complaint, except those relating to the RPC 8.4(c) charge. Thus, we assume that the panel accepted respondent's admission of a violation of that RPC as well.

notified him of his revocation and had followed up with him on several occasions, in respect of his intention to file a motion for reinstatement with the Court. Nor did he affirmatively disclose that the OAE specifically had instructed him to cease his continued practice of law. Rather, respondent simply stated that he continued to practice out of panic and concern for his clients, and then for only a very brief period.

The DEC did not formally rule on the OAE's motion, but, rather, simply noted that the OAE had dismissed the charged violation. No evidence supported the allegations in the complaint relating to the RPC 8.4(c) charge and respondent neither admitted the allegations nor the Rule violation. We, therefore, treated the charge as having been withdrawn by the OAE.

The evidence in the record, including respondent's stipulations, amply supports most of the remaining violations. Respondent commingled personal and trust funds, and engaged in recordkeeping violations (RPC 1.15(a) and RPC 1.15(d)), practiced law while ineligible, and, more egregiously, practiced law knowing that his license had been revoked (RPC 5.5(a) and RPC 8.4(b)). However, because the record contained no facts to support the conclusion that respondent's misconduct either impacted court resources or otherwise prejudiced the administration of justice, we dismissed the RPC 8.4(d) charge.

See In re Colby, 232 N.J. 273 (2018), In the Matter of Maxwell X. Colby, DRB 17-082 (August 29, 2017) (slip op. at 15-16).

As the DEC properly noted, respondent failed to submit any corroborating evidence to support his claims of alcoholism and depression and treatment for same, or his financial problems. The DEC also properly found that, once respondent opened his solo practice, his failure to comply with his reporting requirements or annual payments to the Fund was not simply an oversight. Moreover, we find that respondent's representation of his clients after the OAE unequivocally confirmed his unlicensed status, to be without justification.

The only issue left for determination is the proper quantum of discipline for respondent's violations of RPC 1.15(a) and (d), RPC 5.5(a), and RPC 8.4(b).

Recordkeeping violations, even if accompanied by commingling, ordinarily are met with an admonition, so long as they have not caused a negligent misappropriation of clients' funds. See, e.g., In the Matter of Eric Salzman, DRB 15-064 (May 27, 2015) (following a trust account overdraft, a demand audit uncovered several violations of R. 1:21-6; we considered the attorney's unblemished disciplinary history and his cooperation with ethics authorities); In the Matter of Leonard S. Miller, DRB 14-178 (September 23,

2014) (attorney was guilty of violations of R. 1:21-6 and RPC 1.15(d); in mitigation, we considered the attorney's forty-nine year unblemished ethics history and his ready admission of misconduct by consenting to discipline); and In the Matter of Sebastian Onyi Ibezim, Jr., DRB 13-405 (March 26, 2014) (attorney maintained outstanding trust balances for a number of clients, some of whom were unidentified).

Clearly, respondent's most serious misconduct was his knowing and deliberate practice following the Court's revocation of his license. As stated in In the Matter of Miguel A. Torrellas, DRB 12-302 (March 28, 2013) (slip op. at 13), the presumptive measure of discipline for an attorney who practices law while revoked is a three-month suspension, if the attorney is not aware of the revocation and no aggravating factors are present.

Torrellas, who practiced law with a New York law firm, assumed that the firm was paying his annual assessment to the Fund. However, the assessment had not been paid for ten years. Id. at 2. His New Jersey license was administratively revoked in 2010. He, nevertheless, made two or three appearances in New Jersey courts after the revocation, by filing pleadings and appearing at a trial call in Ocean County. When the judge informed him that his license had been revoked, Torrellas transferred the case to another attorney in his firm. Id. at 3. Torrellas stipulated that, because he practiced primarily in

New York, he did not keep track of the notices from the Fund. He maintained that he did not recall receiving the revocation notice, but did not deny having received it. For that reason, we determined that enhanced discipline was warranted. The Court agreed and prohibited Torrellas from appearing pro hac vice, until the Court's further Order, and ordered that, if he applied for readmission, his readmission be withheld for six months.

In In re Feinstein, 216 N.J. 339 (2013), the Court ordered that the attorney not appear pro hac vice, until further Order of the Court, and that, if he applied for readmission, his readmission be withheld for one year. In Feinstein, the attorney was on the ineligible list from 1994 through 2005, for failing to pay his annual assessment to the Fund. In the Matter of Steven Charles Feinstein, DRB 13-066 (October 25, 2013) (slip op. at 3). The attorney did not make the payments because he was employed by a Philadelphia law firm that did not require him to practice in New Jersey. Feinstein never anticipated that he would practice in New Jersey once he left the firm. Id. at 4.

When Feinstein became employed by another firm that required him to practice in New Jersey, he did not know the exact status of his New Jersey license, but knew that he had not paid the Fund for several years. When he contacted the authorities, he learned that his license had been administratively revoked. He had not kept the Court abreast of his business address, even

though it was his responsibility to do so and, thus, had not received notice of the revocation. The attorney was instructed to file a petition for reinstatement of his license, which was denied without explanation. The Court informed him that he could be readmitted if he passed the New Jersey bar. He passed the exam in February 2008, but, because he had encountered some financial problems, the matter was forwarded to the Committee on Character. Id. at 5.

Feinstein's practice with the new firm was limited to representing homeowners in their claims against homeowners' insurance companies. In April 2010, while the attorney's petition to be reinstated was pending, Feinstein was set to start a trial, when it came to light that his license had not been reinstated. In the interim, he had engaged in pre-hearing discovery, attended depositions, and, in all other respects, held himself out as a duly licensed attorney. Feinstein explained to the judge and opposing counsel that he had taken and passed the bar and that his application for readmission was pending. Feinstein asked the judge to admit him pro hac vice, which the judge refused to do. The case was then adjourned. Id. at 8.

In all, Feinstein had performed legal work on approximately forty-eight New Jersey litigation matters following his revocation. Id. at 4.

Feinstein was found guilty of making misrepresentations to the court, his clients, and third parties, by failing to disclose his ineligibility; and engaging in the unauthorized practice of law. Id. 10-11.

In assessing the proper quantum of discipline, we considered that, in Torrellas, the presumptive discipline for practicing law while on the revoked list was a three-month suspension, if the attorney was unaware of the revocation. In Feinstein, the attorney had knowledge of the revocation, which required that the discipline be enhanced. However, based on the additional serious aggravating factors – that Feinstein handled forty-eight client matters after the revocation of his license and made multiple misrepresentations about his eligibility to practice – we concluded that a further enhancement was warranted. Id. at 12-13. Thus, he was required to wait one year before seeking readmission to practice law.

Finally, in In re Hoffberg, 219 N.J. 426 (2014), the Court imposed a reprimand, barred the attorney from appearing pro hac vice until further Order, and ordered that, if he applied for readmission to the bar, his readmission be withheld for a one-year period.

Hoffberg's license was administratively revoked in September 2011. The disciplinary stipulation in the matter noted that he was licensed to practice law in New York, but did not mention whether he was actively practicing there at

the relevant time. In the Matter of Barry Alan Hoffberg, DRB 13-377 (June 5, 2014) (slip op. at 2). One month after his license revocation, he met with clients and agreed to file an adoption petition on their behalf. In February 2012, the OAE instructed Hoffberg to take down his law firm website and disconnect his law office telephone, which he did. He accepted a fee from the clients, however, and, afterwards, grossly neglected the matter, failed to keep the clients reasonably informed about the status of their matter and to comply with their reasonable requests for information, abandoned the clients after accepting a fee, failed to advise them to retain a licensed attorney, failed to refund their retainer, and knowingly practiced law after his licensed had been revoked. Hoffberg, DRB 13-377 at 5-6.

We concluded that, had Hoffberg's misconduct been confined to practicing on a revoked license, a six-month waiting period after filing an application for readmission might have been appropriate. Hoffberg, however, lied to multiple parties in the judicial process and abandoned his clients' interests, a "very serious offense." Id. at 12. Hoffberg was also guilty of knowingly practicing law while ineligible, prior to his license revocation, in fewer than ten matters. Id. at 13.

Unlike Torrellas and Feinstein, respondent cannot argue that he was practicing in another jurisdiction and that he believed that the law firm by

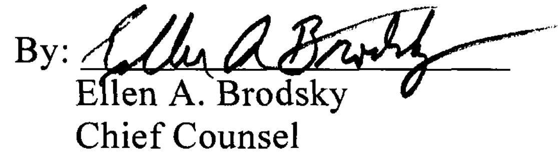
whom he was employed was paying his annual assessment or that he did not intend to practice law in New Jersey. Respondent became ineligible to practice once he began his solo practice. It is inconceivable that an experienced attorney would simply forget to pay his annual assessment for eight years and to comply with his reporting requirements. Even if respondent is given the benefit of the doubt, he knew, no later than May 11, 2016, that his licensed had been revoked. He, nevertheless, defiantly continued to represent clients for approximately five months. In this regard, respondent's conduct is more egregious than Torrellas' (six-month waiting period), where the attorney made only two or three appearances in New Jersey, did not necessarily know that his license had been revoked, and transferred the case to another attorney from his firm, once he was informed of the revocation. Thus, we determine that, like Feinstein and Hoffberg, respondent not be permitted to appear pro hac vice in any New Jersey matters, until further Order of the Court and, if he applies for readmission, his readmission be withheld for one year.

We also determine to require the OAE to refer respondent's conduct to the Illinois disciplinary authorities.

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

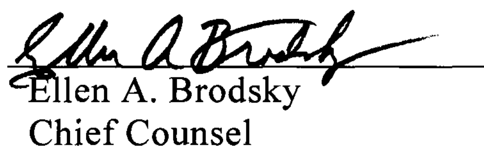
In the Matter of William John Bowe
Docket No. DRB 18-282

Argued:

Decided: January 24, 2019

Disposition: Suspension/Other

Members	Suspension/Other	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