Supreme Court of New Jersey
Disciplinary Review Board
Docket No. DRB 19-083
District Docket No. XIV-2017-0685E

In the Matter of :
Jeffrey R. Pocaro :
An Attorney at Law :

Decision

Argued: May 23, 2019

Decided: September 19, 2019

Joseph A. Glyn appeared on behalf of the Office of Attorney Ethics.

Respondent appeared pro se.

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

This matter was before us pursuant to R. 1:20-6(c)(1).[1] The Office of Attorney Ethics (OAE) charged respondent with violating RPC 8.4(d) (conduct

[1] This Rule provides that the pleadings and a statement of the procedural history of the matter may be filed directly with us, without a hearing, if the pleadings do not raise genuine disputes of material fact, respondent does not request an opportunity to be heard in mitigation, and the presenter does not request an opportunity to present aggravating circumstances.

prejudicial to the administration of justice), by failing to comply with R. 1:20-16 (presumably subparagraph (i), which prohibits suspended attorneys from practicing law) and R. 1:20-20 (presumably subparagraph (b), which similarly forbids suspended attorneys to practice law). Respondent admitted the allegations of the complaint. For the reasons set forth below, we determine to impose no additional discipline on respondent.

Respondent was admitted to the New Jersey bar in 1982. He has an extensive history of discipline and currently is suspended.

In 1995, respondent received a one-year suspension for violating RPC 8.4(b) (criminal conduct) and RPC 8.4(c) (misrepresentation). In that matter, he had misrepresented that a racehorse was not encumbered by a bank lien, in order to obtain a loan for a client through a sale lease back transaction. In re Pocaro, 142 N.J. 423 (1995). Respondent was charged in a federal complaint with a scheme to defraud another person by use of interstate wire, 18 § U.S.C. 1343. He entered into a deferred prosecution program, which required that he repay funds to his client, that he report the matter to the OAE and, if so directed by the U.S. Pretrial Services Office, that he continue participation in Gamblers' Anonymous. Respondent blamed his disease of compulsive gambling for his having engaged in the conduct "to reduce the crushing debt burden that the disease had brought about." He advanced, as mitigating factors, his financial

burden and the measures he had taken to combat his gambling problem. He was reinstated to practice law in December 1996. In re Pocaro, 146 N.J. 576 (1996).

In 2006, respondent was censured for misconduct in a civil rights action. He was guilty of gross neglect, lack of diligence, failure to expedite litigation, and failure to communicate with a client. We considered in mitigation that, once his employer was suspended from the practice of law, respondent became responsible for overseeing 400 cases; that only one client matter had been involved; that he admitted his wrongdoing; and that he appeared truly remorseful for his misconduct. In re Pocaro, 187 N.J. 410 (2006).

In 2013, respondent received another censure for requesting that his adversary in a lawsuit withdraw an ethics grievance filed against respondent in exchange for his forbearance from instituting a defamation action against the adversary's client, a violation of RPC 8.4(d). We determined that the censure was warranted based on respondent's significant ethics history and his propensity to violate the Rules of Professional Conduct. In re Pocaro, 214 N.J. 46 (2013).

In 2014, respondent was suspended for three months for his misconduct in one client matter in which he was retained to recoup damages for injuries a horse trainer had inflicted on a stallion while training it. In re Pocaro, 219 N.J. 320 (2014). In that matter, he failed to provide the client with a writing setting

forth the basis or rate of his fee; engaged in a lack of diligence; failed to expedite litigation; failed to communicate with the client by failing to inform her that he had not conducted adequate discovery, had not obtained an expert for the case, and had not prepared for trial; made misrepresentations to the client that he had filed various motions for an adjournment of the trial, for an extension of discovery, and for the judge's recusal; misrepresented the judge's comments about the case, which was also deemed conduct prejudicial to the administration of justice; and failed to obtain the client's consent to file an appeal from a judge's order, which served to further delay the case. In assessing the proper quantum of discipline, we considered respondent's significant ethics history; his failure to learn from previous ethics matters; and his prior misrepresentations. He was reinstated on January 28, 2015. In re Pocaro, 220 N.J. 346 (2015).

In 2017, in two consolidated matters, respondent was suspended for three years, effective October 12, 2017. In re Pocaro, 230 N.J. 380 (2017). He remains suspended to date. In the first matter, he failed to provide his client with sufficient information to make an informed decision about the representation; engaged in a concurrent conflict of interest by using information relating to the representation of one client to the disadvantage of another client; revealed information relating to a client, without obtaining the client's consent; improperly accepted compensation for representing a client from one other than

the client; and permitted the payor of the client's fee to direct or regulate his professional judgment in rendering legal services.

In the second matter, respondent continued to practice law after the effective date of his suspension. He had negotiated a settlement and a payment schedule on behalf of a client, prior to his suspension. When the defendant failed to execute the settlement, respondent resubmitted the agreement to the defendant's attorney, via fax, after the effective date of his suspension. When respondent filed a motion to be relieved as counsel from the matter, he used the designation "Esquire" on papers filed with the court, attached a certification in support of the motion, and requested substantive relief in the matter, seeking enforcement of the settlement.

In his petition for reinstatement, respondent affirmed that he had not engaged in the practice of law during his suspension, failing to mention that he had filed a motion for substantive relief on behalf of his client, after the effective date of his suspension.

In that matter, respondent stipulated that he engaged in the unauthorized practice of law and conduct prejudicial to the administration of justice by failing to comply with the Court's Order of suspension. During argument before us, respondent contended that R. 1:20-20, requiring a suspended attorney to notify the Court of any motion the suspended attorney filed, should be amended. He

asserted that, if he had been required to attach the motion he had filed with his R. 1:20-20 affidavit, "it might have stopped [him] from putting in the request for relief." In other words, if he had been required to attach the motion, he might not have engaged in the unauthorized practice of law because he knew he would have been caught. In the Matter of Jeffrey R. Pocaro, DRB Docket Nos.16-205 and 16-220 (March 1, 2017) (slip op. at 48).

We now turn to the facts of the matter.

As previously noted, respondent's three-year suspension, effective October 12, 2017, resulted, in part, from his filing a motion to be relieved as counsel using letterhead that identified him as an attorney. During oral argument in that prior ethics matter, respondent stated, with respect to his obligations under R. 1:20-20, "that if the same circumstances presented themselves a year from now, with the same parties, and the rule remained unchanged," he would repeat the misconduct.

On October 16, 2017, the OAE received respondent's R. 1:20-20 affidavit, dated October 9, 2017, in which he affirmed that, "[d]uring my suspension, I shall cease to use any stationery, bank accounts or checks on which my name appears as a lawyer or attorney-at-law, or in connection with the words law 'office.'"

On November 13, 2017, in the matter of North Brunswick First Aid & Rescue Squad Inc. v. 1600 Route One Holdings, respondent filed a motion in the Superior Court of New Jersey, Middlesex County, to be relieved as plaintiff's counsel. Shortly thereafter, the Superior Court notified the OAE of respondent's submission, which prompted the investigation in this matter.

Respondent's cover letter, enclosing the motion papers to the Superior Court, bore the caption, "Law Office of Jeffrey R. Pocaro." The notice of motion, certification in support of the motion, and certification of service identified respondent as "Jeffrey R. Pocaro, Esq., attorney for plaintiff."

During the March 1, 2018 OAE interview, respondent admitted that he filed the motion during his suspension, that he should not have used the letterhead identifying him as an attorney, and that it was "stupidity" on his part to have done so. The complaint noted that respondent recently had been suspended for similar conduct involving R. 1:20-20.

Respondent's cover letter to the court specifically acknowledged that he was serving a three-year suspension and, therefore, could not file the motion electronically. His notice of motion stated that he was seeking an order "relieving Jeffrey R. Pocaro, Esq., as attorney for the Plaintiff" on the grounds set forth in his certification. The certification asserted that respondent is an attorney-at-law of the State of New Jersey; that he represents the plaintiff; that

the Court suspended him for three years, effective October 12, 2017; and that the Court Rules require that he file a motion to be relieved as counsel, because after he notified the client of his suspension, the client had not identified substitute counsel.

Rule 1:20-20(b)(11) states, in relevant part, "[i]n the event a client involved in litigation or a pending proceeding does not obtain a substitute attorney within 20 days of the mailing of said notice, the disciplined or former attorney shall move pro se in the court . . . in which the action or proceeding is pending for leave to withdraw therefrom."

The complaint charged respondent with violations of RPC 8.4(d), and R. 1:20-16 and R. 1:20-20.

Respondent admitted the allegations in his December 31, 2018 answer to the ethics complaint. He maintained, however, that, on November 13, 2017, while preparing the motion, he had been notified that his ninety-four-year-old mother, who had been residing in a Florida nursing home, had suffered a heart attack and was transported to a hospital. Distraught with the news, he rushed to complete the motion, but failed to proofread it before mailing it. Respondent was distracted by the travel arrangements he needed to make, and did not consider his suspension while preparing the motion. Respondent did not arrive at the Florida hospital in time to see his mother before she passed away.

According to respondent, his mental condition at the time he was preparing the motion was "causally related to the offense charged."

Following our review of the record, we are satisfied that the record clearly and convincingly established that respondent was guilty of unethical conduct. Rule 1:20-20(b)(4) prohibits a suspended attorney from using stationery suggesting that the attorney is entitled to practice law. Also, R. 1:20-20(b)(5) requires a suspended attorney to cease using bank accounts or checks on which the attorney's name appears as a lawyer or "attorney-at-law or in connection with the words 'law office.'" Clearly, respondent violated these Rules by filing a motion with the court to be relieved as counsel, and identifying himself as an attorney. Respondent, thus, failed to comply with the Court's Order of suspension and, therefore, violated RPC 8.4(d). This Rule does not require intent.

Respondent used the designation "Law Office of Jeffrey R. Pocaro" and "Esq." liberally throughout his filing. However, because both his cover letter and certification expressly disclosed his status as a suspended attorney, respondent had not intended to mislead the Superior Court.

In respect of the violation of RPC 8.4(d), conduct prejudicial to the administration of justice comes in a variety of forms, and the discipline imposed for the misconduct typically results in discipline ranging from a reprimand to a

suspension, depending on other factors present, including the existence of other violations, the attorney's ethics history, and mitigating or aggravating factors. See, e.g., In re Cerza, 220 N.J. 215 (2015) (reprimand imposed on an attorney who 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)); In re Gellene, 203 N.J. 443 (2010) (reprimand for an 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 also was 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; his ethics history included two private reprimands and an admonition); In re D'Arienzo, 207 N.J. 31 (2011) (censure for an attorney who failed to appear in municipal court for a scheduled criminal trial, and thereafter failed to appear at two orders to show cause stemming from his failure to appear at the trial; by scheduling more than one matter for the trial date, the attorney inconvenienced the court, the prosecutor,

the complaining witness, and two defendants; in addition, the attorney's failure to provide the court with advance notice of his conflicting calendar prevented the judge from scheduling other cases for that date; prior three-month suspension and two admonitions plus failure to learn from similar mistakes justified a censure); In re LeBlanc, 188 N.J. 480 (2006) (censure for misconduct in three client matters including conduct prejudicial to the administration of justice for failure to appear at a fee arbitration hearing, failure to abide by a court order for failure to produce information, and other ethics violations; mitigation included the attorney's recognition and stipulation of his wrongdoing, and a lack of intent to disregard his obligation to cooperate with ethics authorities); In re DeClemente, 201 N.J. 4 (2010) (three-month suspension for an attorney who arranged three loans to a judge in connection with his own business, failed either to disclose to opposing counsel his financial relationship with the judge or to ask the judge to recuse himself, made multiple misrepresentations to the client, engaged in an improper business transaction with the client, and engaged in a conflict of interest); In re Block, 201 N.J. 159 (2010) (six-month suspension where the attorney violated a court order that he had drafted by failing to transport his client from prison to a drug treatment facility, instead he left the client at a church while he made a court appearance in an unrelated case; the client fled and encountered more problems while on the

run; the attorney also failed to file an affidavit in compliance with R. 1:20-20, failed to cooperate with disciplinary authorities, failed to provide clients with writings setting forth the basis or rate of the fees, lacked diligence, engaged in gross neglect, and failed to turn over a client's file; prior reprimand and one-year suspension); and In re Bentivegna, 185 N.J. 244 (2005) (motion for reciprocal discipline; two-year suspension for an attorney who was guilty of making misrepresentations to an adversary, negotiating a settlement without authority, filing bankruptcy petitions without authority to do so and without notifying her clients, signing clients' names to documents, making misrepresentations in pleadings filed with the court, violating a bankruptcy rule prohibiting the payment of fees before paying filing fees; the attorney was guilty of conduct prejudicial to the administration of justice, gross neglect, failure to abide by the client's decision concerning the objectives of the representation, failure to communicate with clients, excessive fee, false statement of material fact to a tribunal, and misrepresentations).

Here, we find that respondent was not trying to mislead anyone and, as he claimed, his misconduct was the result of sheer "stupidity," rather than intentional or defiant conduct, which occurred in the above cases. In that regard, his conduct was somewhat similar to the attorney's conduct in In re Al-Misri, 220 N.J. 352 (2015). In that case, the attorney was ineligible to practice law for

failure to pay his annual assessment to the New Jersey Lawyers' Fund for Client Protection. During his period of ineligibility, he sought to be relieved from a previously Court-ordered condition, by forwarding to the Court, a petition on letterhead, referring to himself as an "Attorney at Law" and stating his address for his law practice. The Court Clerk's office referred the matter to the OAE to determine whether Al-Misri had practiced law while ineligible. Al-Misri maintained that he had used his letterhead

> for identification purposes. It never even crossed my mind that in communicating within my profession that that in and of itself because I was trying to be informative as to who was communicating that that constituted in itself the practice of law. I was simply informing them who it was that was petitioning.
>
> In the Matter of Ousmane D. Al-Misri, DRB 14-097 (October 3, 2014) (slip op. at 8).

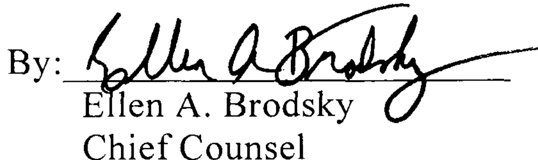
We found that Al-Misri's use of attorney letterhead, when he petitioned the Court, did not constitute the intentional practice of law. No member of the public was misled by his use of the letterhead. We further found that, although his conduct in that regard may have been "technically improper," Al-Misri acted in a "pro se capacity." We determined that the attorney was not guilty of practicing law while ineligible and, at most, his conduct was de minimis and did not warrant discipline. He, nevertheless, was guilty of failing to cooperate with ethics authorities by ignoring the investigator's requests for information on

whether he had practiced law during his ineligibility period. The Court determined that the attorney's violation in that regard was de minimis and undeserving of formal discipline and dismissed the complaint.

The record in this case does not establish that respondent's conduct was defiant. He was not charged with practicing law while suspended, but with violating RPC 8.4(d), which he admittedly did, by violating R. 1:20-16 and R. 1:20-20. Because respondent, like Al-Misri, was acting pro se, and because no member of the public or the court was misled, we determine that no additional discipline is warranted.

Members Petrou, Rivera, and Singer did not participate.

Disciplinary Review Board
Bruce W. Clark, Chair

By: 
Ellen A. Brodsky
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

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Docket No. DRB 19-083

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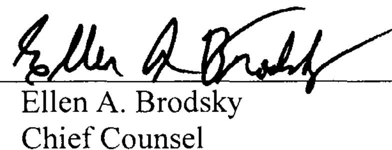
Disposition: No Additional Discipline

Members	No Additional Discipline	Recused	Did Not Participate
Clark	X		
Gallipoli	X		
Boyer	X		
Hoberman	X		
Joseph	X		
Petrou			X
Rivera			X
Singer			X
Zmirich	X		
Total:	6	0	3



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