

Supreme Court of New Jersey
Disciplinary Review Board
Docket No. DRB 19-134
District Docket Nos. XIV-2015-0125E;
XIV-2016-0434E; XIV-2016-0712E;
XIV-2016-0769E; and XIV-2017-0119E

In the Matter of
Young Min Kim
An Attorney at Law

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Decision

Argued: June 20, 2019

Decided: November 27, 2019

Hillary K. Horton 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 recommendation for disbarment filed by the District IIA Ethics Committee (DEC). The formal ethics complaints in this matter, which were consolidated for hearing, charged respondent with

violating RPC 1.4(b) (failing to communicate with a client); RPC 5.5(a)(1) (practicing law while suspended) (two counts); RPC 8.1(b) (failing to cooperate with disciplinary authorities) (five counts); and RPC 8.4(d) (engaging in conduct prejudicial to the administration of justice) (three counts).

For the reasons detailed below, we determine to impose a three-year suspension.

Respondent earned admission to the New Jersey bar in 2006 and to the New York bar in 2001. In 2015, he received a censure for failure to cooperate with the Office of Attorney Ethics' (OAE) investigation of a shortage in his trust account. In re Kim, 221 N.J. 438 (2015). Effective June 15, 2016, he was temporarily suspended for failing to comply with the Court's Order to provide the OAE with financial records and trust account reconciliations in connection with the same investigation. In re Kim, 225 N.J. 329 (2016). He remains suspended to date.

During the relevant time frame, respondent maintained an office for the practice of law in Fort Lee, New Jersey.

Docket Nos. XIV-2015-0125E and XIV-2016-0434E

Respondent's 2015 censure, for failing to cooperate with the OAE in its investigation into whether he had knowingly misappropriated trust funds, stemmed from a report by respondent's accountant of a shortage of \$57,968.21 in respondent's attorney trust account.

On March 20, 2015, the OAE docketed a knowing misappropriation investigation, based on unexplained negative balances of \$145,507.31 in respondent's attorney trust account. On April 14, 2015, the OAE directed respondent to provide, by May 8, 2015, three-way reconciliations of his Wilshire State Bank attorney trust account (WSB ATA); corresponding WSB ATA bank statements and deposit slips; and three specific client files. Respondent failed to comply. Thereafter, despite the OAE's exhaustive attempts, over the span of a year, to audit respondent's WSB ATA and other trust accounts, respondent neither fully satisfied the OAE's requirements nor appeared at a demand interview.

Accordingly, on February 4, 2016, the OAE sought respondent's temporary suspension from the practice of law. On May 9, 2016, the Court ordered respondent to "provide . . . all outstanding records and account reconciliations" to the OAE within forty-five days, warning that, if he failed to comply, he "may be immediately temporarily suspended from the practice of

law without further notice.” Despite acknowledging receipt of the Court’s Order, respondent neither complied nor requested an extension of time to comply. Moreover, although respondent completed attorney trust account reconciliations for certain client matters and prepared corresponding refund checks, he failed to disburse the funds to those clients.

Consequently, the Court temporarily suspended respondent, effective June 15, 2016, for failing to comply with the Court’s Order to provide the OAE with financial records and trust account reconciliations in connection with the knowing misappropriation investigation. The Order also froze all six attorney trust and business accounts that respondent maintained in New Jersey. The Court served a copy of its Order on respondent at both his office and home addresses of record.

Following respondent’s temporary suspension, the OAE continued to demand that he provide the records necessary to complete its knowing misappropriation investigation. Respondent admitted that he failed to comply with all of the OAE’s requirements. He further admitted that, as of the date of the ethics hearing, he still had not fully satisfied all of the OAE’s requirements, but claimed that he was “working on” years of attorney trust account reconciliations.

After respondent was temporarily suspended, he neither filed the required R. 1:20-20 affidavit with the OAE nor replied to OAE correspondence regarding that failure. During the ethics hearing, respondent acknowledged that he had neither submitted the R. 1:20-20 affidavit nor notified New York disciplinary authorities of his temporary suspension, but claimed that he was taking steps to accomplish both, with the assistance of counsel.

In his verified answer to the formal ethics complaint, respondent asserted that he made efforts to provide requested information to the OAE; had psychological issues that impeded his response to the ethics grievances; and had ceased the practice of law in New Jersey.

Docket Nos. XIV-2016-0712E, XIV-2016-0769E, and XIV-2017-0119E

The Naiteek Patel Matter

In January 2016, Naiteek Patel (Naiteek) retained respondent in connection with the purchase of a liquor license and business in Elizabeth, New Jersey. On January 22 and May 24, 2016, Naiteek gave respondent checks of \$77,513.77 and \$34,000, respectively, in connection with the anticipated transaction. Respondent deposited both checks into his WSB ATA.

Respondent failed to inform Naiteek of his June 15, 2016 temporary suspension, as the Court's Order and R. 1:20-20 required. During the ethics

hearing, respondent claimed that, because he had relocated his office in June 2016, he did not learn of his suspension until August 2016, when his attorney bank accounts were frozen. Respondent admitted that he was obligated to keep “the Court” updated of his law office address, and claimed he had taken the steps necessary to forward his mail to his new office.¹ The OAE countered that the Court’s Order suspending respondent also had been sent, via certified mail, to respondent at his home address. In turn, respondent claimed he was living in a home with his parents and his sister’s family, a total of eleven people, that he did not know who signed the receipt for the certified mailing of the Court’s Order, and that he never received it.

Despite his suspended status, respondent repeatedly communicated with Paul Grzenda, the seller’s attorney, regarding the transaction. On July 25, 2016, respondent appeared before the Elizabeth Alcohol and Beverage Control Board in behalf of Naiteek.² In his verified answer, respondent maintained that he was unaware of his suspension at the time of that appearance.

Prior to the August 1, 2016 closing date for the transaction, respondent informed Naiteek and Grzenda that, because he had been suspended from the

¹ Rule 1:20-1(c) requires attorneys to notify the New Jersey Lawyers’ Fund for Client Protection (CPF) of changes in their billing addresses and to notify the OAE of changes in their home or law office addresses prior to those changes, or within thirty days thereafter.

² On January 17, 2018, Grzenda was disbarred for knowing misappropriation of client and escrow funds.

practice of law, he would not attend the closing. The closing was not consummated, and Naiteek's funds were temporarily frozen, due to the Court's Order that restrained respondent's New Jersey bank accounts. Naiteek eventually achieved the release of his funds with the assistance of the CPF, but, in the interim, was sued by the seller for breach of contract, and claimed to have sustained more than \$436,000 in damages as a consequence of respondent's misconduct. As of the date of the ethics hearing, Naiteek had filed a lawsuit against respondent, who had yet to file an answer.

The Anna Hong and Jung Lim Matter

On July 12, 2016, subsequent to his temporary suspension, respondent represented Anna Hong and Jung Lim, the sellers, at a residential real estate closing. Respondent maintained that, because he was unaware of his suspension at the time of this representation, he did not inform the parties of his suspended status. Respondent received a fee of \$950 for the representation, and issued a \$1,000 check to the buyer, Rajesh Patel (Rajesh), in connection with the settlement. When Rajesh attempted to negotiate the check, however, he was informed that respondent's bank account had been frozen, pursuant to the Court's Order. To date, Rajesh has not been paid the \$1,000 owed to him in connection with the real estate transaction.

Respondent's Additional Failures to Cooperate with the OAE

In January and March 2017, the OAE sent three grievances associated with these matters to respondent, by regular and certified mail. Respondent failed to reply to any of them.

In his verified answer to the formal ethics complaint, respondent asserted that he had made efforts to provide the required documents and records to the OAE; was impeded from doing so by psychological issues; and had ceased practicing law in New Jersey. During the ethics hearing, however, respondent's counsel asserted that respondent wished to return to the practice of law in New Jersey, but, since August 2016, had not provided any documents or records to the OAE.

* * *

In his post-hearing submission to the DEC, respondent argued that the charges that he had failed to cooperate with the DEC investigation into his attorney trust account shortage should be dismissed. Specifically, he asserted that he had demonstrated substantial cooperation and had failed to reconcile only "older accounts." He also maintained that he had not knowingly practiced law while suspended, and that the OAE had not proven knowledge, which he contended is an element of RPC 5.5(a)(1).

The OAE requests the imposition of a one- to three-year suspension. Respondent has not requested any specific quantum of discipline.

The DEC found clear and convincing evidence that respondent violated all charged RPCs. The DEC further found that respondent was “not credible in his testimony,” and, in aggravation, that “[r]espondent has shown total indifference to the Rules of Professional Conduct” and “demonstrates defiant conduct.” Without citing or examining any disciplinary precedent, but emphasizing respondent’s “continuing actions in his failure to address the issues before him, for a period in excess of two years,” the DEC concluded that respondent should be disbarred.

Following a de novo review of the record, we are satisfied that the DEC’s finding that respondent’s conduct was unethical is fully supported by clear and convincing evidence. Specifically, we find that respondent violated RPC 1.4(b) (failure to communicate with a client); RPC 5.5(a)(1) (practice of law while suspended); RPC 8.1(b) (failure to cooperate with disciplinary authorities); and RPC 8.4(d) (conduct prejudicial to the administration of justice). We determine, however, to dismiss the allegation that respondent committed a second violation of RPC 8.4(d) by practicing law while suspended, as that charge is adequately addressed by the RPC 5.5(a)(1) charge.

Docket Nos. XIV-2015-0125E and XIV-2016-0434E

On March 20, 2015, the OAE docketed a knowing misappropriation investigation against respondent after being informed, by his accountant, that he had negative client trust balances in his WSB ATA. The OAE alleged that those negative balances totaled \$145,507.31. On April 14, 2015, the OAE directed respondent to provide certain financial records. Respondent failed to do so by the May 8, 2015 deadline. Thereafter, despite the OAE's continued attempts, spanning an entire year, respondent failed to fully satisfy the OAE's requirements, and failed to appear at a demand interview.

On May 9, 2016, after the OAE moved for respondent's temporary suspension, the Court gave him a final opportunity to comply, ordering him to "provide . . . all outstanding records and account reconciliations" to the OAE, warning that, should he once again fail to comply, he "may be immediately temporarily suspended from the practice of law without further notice." Because respondent failed to fully comply, the Court temporarily suspended him, effective June 15, 2016.

The Court served a copy of its Order on respondent at both his office and home addresses of record. Respondent remains suspended, having failed to provide the OAE with the required documents.

Moreover, following his temporary suspension, respondent failed to file the required R. 1:20-20 affidavit, or to reply to OAE correspondence regarding that failure. During the ethics hearing, respondent acknowledged his obligation to file the affidavit, as well as to report his temporary suspension to New York disciplinary authorities. He maintained that he was attempting to meet these obligations, with the assistance of counsel.

Respondent, thus, violated RPC 8.1(b), based on his long-spanning failure to cooperate with the OAE investigation. Moreover, his failure to file the required R. 1:20-20 affidavit further violated both RPC 8.1(b) and RPC 8.4(d).

Docket Nos. XIV-2016-0712E, XIV-2016-0769E, and XIV-2017-0119E

In defense of the charge that he practiced law while suspended, respondent asserted that he was not initially aware of his suspended status, claiming he had relocated his office, in June 2016, and, thus, did not learn of his suspension until August 2016, when his attorney bank accounts were frozen by the Court's Order. We wholly reject that defense. New Jersey attorneys have an affirmative obligation to inform both the CPF and the OAE of changes to their billing, home, and primary law office addresses, "either prior to such change or within thirty days thereafter." R. 1:20-1(c). During the

ethics hearing, respondent admitted knowing of his obligation, pursuant to that Rule, to keep the OAE updated regarding his law office address.

Moreover, the Court also had sent its Order suspending respondent to his home address of record. Respondent maintained that he was living in a home with eleven people, that he did not know who had signed for receipt of the certified mailing of the Court's Order, and that he had never received it. We, like the DEC, determine that respondent's claim that he was unaware of his temporary suspension is simply not credible. In light of his R. 1:20-1(c) obligation to keep the CPF and OAE informed of his addresses, the Court's prior warning that he was subject to immediate suspension, and the lack of any credible explanation on his part, we find that respondent received the Court's Order, and, thus, knew that he had been temporarily suspended.

In January 2016, prior to respondent's suspension, Naiteek retained respondent in the purchase of a liquor license and business in Elizabeth, New Jersey. Thereafter, Naiteek provided respondent with more than \$111,000 in connection with the anticipated transaction, which respondent deposited in his WSB ATA.

Respondent then failed to inform Naiteek of his June 15, 2016 temporary suspension, repeatedly communicated with Grzenda regarding Naiteek's

pending transaction, and, on July 25, 2016, appeared before the Elizabeth Alcohol and Beverage Control Board in behalf of Naiteek.

Due to respondent's misconduct, Naiteek's closing was not consummated. Because Naiteek's funds were temporarily frozen, he sought the release of his funds with the assistance of the CPF. According to Naiteek, he was then sued by the seller for breach of contract and sustained more than \$436,000 in consequential damages.

On July 12, 2016, despite knowing he had been temporarily suspended, respondent represented Anna Hong and Jung Lim, the sellers in a residential real estate transaction. Respondent accepted a fee of \$950 for that improper representation and issued a \$1,000 check to the buyer, Rajesh, in connection with the settlement. When Rajesh attempted to negotiate the check, however, he was informed that respondent's bank account had been frozen, pursuant to the Court's Order. To date, Rajesh has not been paid the \$1,000 owed to him in connection with the real estate transaction.

Respondent, thus, violated RPC 1.4(b) by failing to inform Naiteek that he had been suspended from the practice of law, and violated RPC 5.5(a)(1) by practicing law, in two client matters, while suspended.

In January and March 2017, the OAE sent three grievances to respondent, by regular and certified mail. By failing to reply to any of them, respondent committed three more violations of RPC 8.1(b).

In sum, respondent violated RPC 1.4(b) (failure to communicate with a client); RPC 5.5(a)(1) (practice of law while suspended) (two instances); RPC 8.1(b) (failure to cooperate with disciplinary authorities) (five instances); and RPC 8.4(d) (conduct prejudicial to the administration of justice) (one instance). We determine to dismiss the allegation that respondent committed a second violation of RPC 8.4(d) by practicing law while suspended, as that charge is adequately addressed by the RPC 5.5(a)(1) charge. The sole issue left for determination is the proper quantum of discipline for respondent's misconduct.

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 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 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 and appeared in a 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 some financial support for himself; prior three-month suspension); In re Wheeler, 140 N.J. 321 (1995) (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);³ In re Marra, 183 N.J. 260 (2005) (three-year suspension for attorney found guilty of practicing law in three matters while

³ In that same Order, the Court imposed a retroactive one-year suspension, on a motion for reciprocal discipline, for the attorney's retention of unearned retainers, lack of diligence, failure to communicate with clients, and misrepresentations.

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 had an egregious disciplinary history: an admonition, two reprimands, a three-month suspension, and two six-month suspensions); 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 grievance; 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); and In re Olitsky, 174 N.J. 352 (2002) (attorney disbarred after he was suspended and agreed to represent four clients in bankruptcy cases, 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, after the attorney was suspended, he agreed to represent a client in a mortgage foreclosure, 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 crafting the appropriate discipline, we also consider aggravating and mitigating factors. In aggravation, respondent previously was censured for failing to cooperate with the OAE's investigation, and was warned by the Court that his continuing failure to cooperate would beckon more severe consequences. Despite that prior discipline and the Court's directive, respondent ceased any effort to comply with the OAE investigation. There is no mitigation to consider.

Based on disciplinary precedent, we determine that a three-year suspension is the proper quantum of discipline for respondent's ethics violations. His misconduct is most analogous to that of the attorney in Wheeler, who, in addition to practicing law while suspended, continued to fail to cooperate with disciplinary authorities, and, as a result, was suspended for two years. Unlike the attorneys in Brady and Bowman, who received only one-year suspensions, respondent does not present compelling mitigation. Moreover, his client, Naiteek, suffered serious financial harm resulting from respondent's infractions. Respondent's conduct and disciplinary history, however, are not as egregious as those of the attorneys who were disbarred for their misconduct.

Vice-Chair Gallipoli and Member Rivera voted to recommend respondent's disbarment. 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
Bruce W. Clark, Chair

By: 
Ellen A. Brodsky
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD


In the Matter of Young Min Kim
Docket No. DRB 19-134

Argued: June 20, 2019

Decided: November 27, 2019

Disposition: Three-Year Suspension

<i>Members</i>	Three-Year Suspension	Disbar	Recused	Did Not Participate
Clark	X			
Gallipoli		X		
Boyer	X			
Hoberman	X			
Joseph				X
Petrou	X			
Rivera		X		
Singer	X			
Zmirich	X			
Total:	6	2	0	1


Ellen A. Brodsky
Chief Counsel