

Supreme Court of New Jersey
Disciplinary Review Board
Docket No. DRB 19-335
District Docket No. XIV-2019-0173E

In the Matter of
Lenard F. Collett
An Attorney at Law

Decision

Argued: January 16, 2020

Decided: May 12, 2020

Ashley L. Kolata-Guzik appeared on behalf of the Office of Attorney Ethics.

Kim D. Ringler 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 motion for reciprocal discipline filed by the Office of Attorney Ethics (OAE), pursuant to R. 1:20-14(a), following an order from the Supreme Court of Pennsylvania suspending respondent for six months, effective June 7, 2019. Respondent was found guilty of violating the

equivalents of New Jersey RPC 5.5(a) (unauthorized practice of law) and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit, or misrepresentation).

For the reasons set forth below, we determine to grant the OAE's motion and impose an admonition.

Respondent earned admission to the New Jersey bar in 2001 and to the Pennsylvania bar in 2007.¹ From September 29, 2008 through August 23, 2010, respondent was ineligible to practice law in New Jersey for failure to pay his annual assessment to the New Jersey Lawyers' Fund for Client Protection.

At the relevant times, respondent worked for the SAP America company in Newtown Square, Pennsylvania. He has no disciplinary history in New Jersey.

On April 3, 2019, the Disciplinary Board of the Supreme Court of Pennsylvania filed a Joint Petition in Support of Discipline on Consent (JP), on which the Supreme Court of Pennsylvania relied in determining to suspend respondent. The facts of the case set forth in the JP are as follows.

In October 2007, respondent moved from New Jersey, where he worked for Hill Wallack, LLP, to Texas, where he worked for Dell Marketing, LP, in

¹ Although the Centralized Attorney Management System indicates that respondent was admitted in Pennsylvania in 2001, according to the website of the Disciplinary Board of the Supreme Court of Pennsylvania, respondent was admitted in that jurisdiction in 2007.

the role of contract negotiator, until September 2012. On July 1, 2008, respondent registered in Pennsylvania as voluntarily inactive. Although his Pennsylvania law license remained inactive, he began practicing law as corporate counsel for Victaulic Company, in Easton, Pennsylvania, in October 2012, and as counsel for SAP America, in Newtown Square, Pennsylvania, in October 2015.

On December 13, 2017, respondent filed a Petition for Reinstatement from Administrative Suspension with the Disciplinary Board of the Supreme Court of Pennsylvania. In his petition, respondent divulged that, in October 2012, he began practicing law in Easton, Pennsylvania, and that, in October 2015, he commenced working as counsel for SAP America, in Newtown Square, Pennsylvania. Respondent represented that, once he realized that he was required to be licensed in Pennsylvania, he immediately informed his SAP supervisor, stopped performing all duties requiring a Pennsylvania law license, and ceased identifying himself as "counsel." Pursuant to his request, respondent was reassigned to a New Jersey SAP location, because he had maintained an active New Jersey law license. To date, he continues to work at the New Jersey location.

After retaining counsel, respondent withdrew his petition for reinstatement, in order to address the Pennsylvania Office of Disciplinary

Counsel's (ODC) questions concerning his Pennsylvania RPC 5.5 compliance. Respondent asserted to the ODC that he erroneously believed that he was not required to maintain an active Pennsylvania law license, because he was working as a corporate attorney on extra-judicial issues. Respondent expressed remorse for his disregard of Pennsylvania's licensing obligations and for his misconduct. He accepted full responsibility for his failure to seek reinstatement of his Pennsylvania license before resuming the practice of law in Pennsylvania, in October 2012.

In mitigation, the ODC acknowledged that respondent admitted the misconduct, expressed remorse, cooperated with the ODC by entering into the JP, and had no disciplinary history. Respondent and the ODC agreed that the proper quantum of discipline for respondent's admitted misconduct was a six-month suspension from the practice of law. Consequently, respondent consented to a six-month suspension in Pennsylvania.

By letter dated March 20, 2019, respondent's counsel informed the OAE that respondent had been the subject of a disciplinary matter in Pennsylvania, and provided details about his misconduct. Respondent's counsel represented that she would update the OAE when the Pennsylvania matter concluded, and requested that, if the OAE commenced a reciprocal disciplinary action, no sanction be imposed.

On June 7, 2019, the Supreme Court of Pennsylvania granted the joint petition, and suspended respondent for six months.

Following a review of the record, we determine to grant the OAE's motion for reciprocal discipline. Pursuant to R. 1:20-14(a)(5), "a final adjudication in another court, agency or tribunal, that an attorney admitted to practice in this state . . . is guilty of unethical conduct in another jurisdiction . . . shall establish conclusively the facts on which it rests for purposes of a disciplinary proceeding in this state." Thus, with respect to motions for reciprocal discipline, "[t]he sole issue to be determined . . . shall be the extent of final discipline to be imposed." R. 1:20-14(b)(3).

In Pennsylvania, the standard of proof in attorney disciplinary matters is that the "[e]vidence is sufficient to prove unprofessional conduct if a preponderance of the evidence establishes the conduct and the proof . . . is clear and satisfactory." Office of Disciplinary Counsel v. Kissel, 442 A. 2d 217 (Pa. 1982) (citing In re Berland, 328 A.2d 471 (Pa. 1974)). Moreover, "[t]he conduct may be proven solely by circumstantial evidence." Office of Disciplinary Counsel v. Grigsby, 425 A. 2d 730 (Pa. 1981) (citations omitted).

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

The Board shall recommend the imposition of the identical action or discipline unless the respondent

demonstrates, or the Board finds on the face of the record on which the discipline in another jurisdiction was predicated that it clearly appears that:

(A) the disciplinary or disability order of the foreign jurisdiction was not entered;

(B) the disciplinary or disability order of the foreign jurisdiction does not apply to the respondent;

(C) the disciplinary or disability order of the foreign jurisdiction does not remain in full force and effect as the result of appellate proceedings;

(D) the procedure following in the foreign disciplinary matter was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process; or

(E) the unethical conduct established warrants substantially different discipline.

Subsection (E) applies in this matter because the unethical conduct warrants substantially different discipline.

We note that, in respondent's Pennsylvania disciplinary proceedings, he stipulated both to his violations of that jurisdiction's RPCs and to the quantum of discipline to be imposed. Specifically, respondent stipulated, via the JP, that he had violated RPC 5.5(a) by practicing law in Pennsylvania, for approximately five years, without a valid Pennsylvania law license. Although respondent also stipulated that he violated RPC 8.4(c) by knowingly practicing law in Pennsylvania without a license, the record does not contain sufficient facts to support that charge. To the contrary, the JP makes clear that respondent asserted

a belief that his positions as in-house counsel did not require the maintenance of a valid Pennsylvania license. Moreover, respondent's misconduct is adequately addressed by the RPC 5.5(a) violation.

In sum, we find that respondent violated the equivalent of New Jersey RPC 5.5(a). We determine to dismiss the RPC 8.4(c) charge. The only remaining issue for our determination is the appropriate quantum of discipline to be imposed for respondent's misconduct.

The OAE recommended a censure, relying solely on In re Butler, 215 N.J. 302 (2013) (for more than two years, attorney practiced with a law firm in Tennessee, although not admitted there; pursuant to an "of counsel" agreement, the attorney was to become a member of the Tennessee bar and her law firm was to pay her admission costs; the attorney provided no explanation for her failure to follow through with the requirement that she gain admission to the Tennessee bar; she was suspended for sixty days in Tennessee, where the disciplinary authorities determined that her misconduct stemmed from a "dishonest or selfish motive"). At oral argument before us, respondent's counsel urged us to impose an admonition.

The following precedent provides additional guidance regarding the appropriate sanction. Attorneys who practice law in jurisdictions where they are not licensed have received discipline ranging from an admonition to a

suspension, depending on the occurrence of other ethics infractions, their disciplinary history, and the presence of aggravating and mitigating factors. See, e.g., In the Matter of Mateo J. Perez, DRB 13-009 (June 19, 2013) (admonition; although not admitted in New York, attorney represented a client there; attorney had represented several other clients in New York after having been admitted pro hac vice or having disclosed to the judges that he had not been admitted in New York; attorney, thus, believed that he could represent clients without admission; the clients were family and friends of the attorney and were not charged for the representation; mitigating factors included the absence of prior discipline and lack of personal financial gain; violation of RPC 5.5(a)); In the Matter of Duane T. Phillips, DRB 09-402 (February 26, 2010) (admonition; attorney, who was not admitted in Nevada, represented a client who was obtaining a divorce in that state; in mitigation, the conduct involved only one client, the attorney had no ethics history, and a recurrence of the conduct was unlikely; violation of RPC 5.5(a)); In re Brown, 216 N.J. 341 (2013) (reprimand; after agreeing to represent a client before the Court of Appeals for Veterans Claims (CAVC), attorney failed to advance the appeal, failed to keep the client informed about the status of his matter, and failed to notify him that he had terminated the representation; moreover, because the attorney had not been admitted to practice before the CAVC, he engaged in the unauthorized practice

of law; violation of RPC 1.3, RPC 1.4(b), RPC 1.16(d) and RPC 5.5(a); no prior discipline); In re Bronson, 197 N.J. 17 (2008) (reprimand; attorney practiced law in New York, a state in which he was not admitted, failed to prepare a writing setting forth the basis or rate of his fee in a criminal matter, and failed to disclose to a New York court that he was not licensed there; the unauthorized practice lasted for about one year and involved one client; violation of RPC 1.5(b), RPC 3.3(a)(5), and RPC 5.5(a)); Butler, 215 N.J. at 302 (detailed above); and In re Lawrence, 170 N.J. 598 (2002) (three-month suspension; in a default matter, the attorney practiced in New York, where she was not admitted to the bar; the attorney also agreed to file a motion in New York to reduce her client's restitution payments to the probation department, failed to keep the client reasonably informed about the status of the matter, exhibited a lack of diligence, charged an unreasonable fee, used misleading letterhead, and failed to cooperate with disciplinary authorities; a violation of RPC 1.3, RPC 1.4(a), RPC 1.5(a), RPC 5.5(a), RPC 7.5(a), RPC 7.1(a), RPC 8.1(b), and RPC 8.4(c)).²

In the present case, respondent's conduct is most similar to that of the attorneys in Perez and Phillips, who had no disciplinary history, and were not

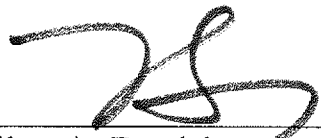
² Generally, in cases involving the unauthorized practice of law, RPC 8.4(c) is not charged, because the misrepresentation that the attorney is admitted to the practice of law in the respective jurisdiction is inherent in the RPC 5.5(a) charge. No additional facts supporting an RPC 8.4(c) charge were asserted in the case now before us.

found to have violated any Rule other than RPC 5.5(a). Moreover, respondent presents multiple mitigating factors: he expressed remorse; has no ethics history in New Jersey; cooperated with the ODC and took responsibility for his misconduct by entering into the JP; and promptly alerted the OAE to his Pennsylvania disciplinary matter. The OAE correctly asserted that the length of time (five years) that respondent was engaged in the unauthorized practice of law in Pennsylvania should be considered as an aggravating factor. We note, however that, during those five years, respondent served as in-house counsel, and, therefore, represented only one client. The record does not reveal any harm to the client. Moreover, when respondent realized that his belief that he did not need an active law license was erroneous, he immediately ceased serving as an attorney and was transferred to a position in New Jersey, where he had maintained an active license.

On balance, we determine to grant the motion and, as in Perez and Phillips, impose an admonition. Member Joseph voted to impose a censure. Member Boyer 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: 
For: Ellen A. Brodsky
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Lenard F. Collett
Docket No. DRB 19-335

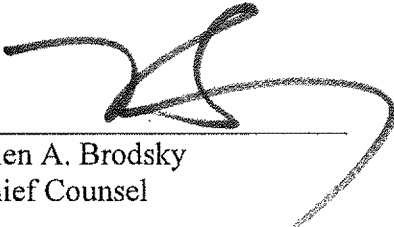
Argued: January 16, 2020

Decided: May 12, 2020

Disposition: Admonition

| <i>Members</i> | Admonition | Censure | Recused | Did Not Participate |
|----------------|------------|---------|---------|---------------------|
| Clark | X | | | |
| Gallipoli | X | | | |
| Boyer | | | | X |
| Hoberman | X | | | |
| Joseph | | X | | |
| Petrou | X | | | |
| Rivera | X | | | |
| Singer | X | | | |
| Zmirich | X | | | |
| Total: | 7 | 1 | 0 | 1 |

For:


Ellen A. Brodsky
Chief Counsel