Supreme Court of New Jersey
Disciplinary Review Board
Docket No. DRB 19-353
District Docket No. XIV-2015-0518E

In the Matter of

Benjamin Morton

An Attorney at Law

Decision

Argued: February 20, 2020

Decided: June 18, 2020

Johanna Barba Jones 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 on a recommendation for a three-month suspension filed by the District VC Ethics Committee (DEC). The formal ethics complaint charged respondent with having violated RPC 1.5(a) (unreasonable fee); RPC 1.16(a)(1) (prohibited representation); RPC 5.5(a) (unauthorized

practice of law); and RPC 7.1(a)(1) (false or misleading communications to a client).

For the reasons set forth below, we determine to impose a three-month suspension, with a condition.

Respondent was admitted to the New Jersey bar in 1998. Presently, he maintains an office for the practice of law in Newark, New Jersey. Previously, respondent served as a military attorney with the United States Judge Advocate General's Corps and as a Special Assistant United States Attorney in both the United States District Court for the Southern District of Ohio and the District of Maryland, Southern Division.

On December 10, 2014, the Court suspended respondent for three months, effective January 6, 2015, for his violations of RPC 1.4(b) (failure to communicate with a client); RPC 1.8(a) (prohibited business transaction with a client); RPC 1.15(d) (failure to comply with the recordkeeping requirements of R. 1:21-6); and RPC 8.4(d) (conduct prejudicial to the administration of justice). In re Morton, 220 N.J. 102 (2014). In that case, respondent accepted a loan from a client, without observing the safeguards of RPC 1.8(a), then failed to comply with the client's request for an accounting. Respondent also threatened to inform

"the authorities" of a privileged conversation with the client. On April 14, 2015, respondent was restored to the practice of law. In re Morton, 221 N.J. 261 (2015).

On November 1, 2017, the Court imposed a reprimand on respondent for his stipulated violation of RPC 1.15(d). In re Morton, 231 N.J. 130 (2017).

Since July 2019, respondent has been ineligible to practice law due to his failure to pay the annual attorney assessment to the New Jersey Lawyers' Fund for Client Protection.

In July 2006, respondent passed the Maryland bar examination. Although he was not admitted to the Maryland bar, he practiced law in that State. On February 7, 2007, a Maryland state court judge informed the Attorney Grievance Commission of Maryland (Maryland Commission) that respondent was representing a client in a state district court action. The Maryland Commission filed an ethics complaint against respondent, which was resolved on May 18, 2007, based on respondent's representation that, going forward, he would not practice law in Maryland until he was admitted to the Maryland bar. The Maryland Commission closed the case, but warned respondent that the matter would be re-opened if he again engaged in the unauthorized practice of law.

More than two years later, on October 16, 2009, respondent agreed to a consent order, which "enjoined and prohibited [him] from engaging in any act

constituting the practice of law in the State of Maryland" (October 2009 consent order). Specifically, respondent had been advertising "business consulting" services through The Morton Law Group, LLP website. Because he failed to follow through on his promise to disable the website, the Maryland Commission sought injunctive relief. Respondent agreed to enter into the consent order, because, in his words, he considered it a corrective action, rather than a final judgment or punishment.

Notwithstanding respondent's 2007 agreement to cease the unlicensed practice of law in Maryland, he continued to do so, as a member of "Morton & Tucker, LLP." As discussed below, he contended that he was permitted to practice law in Maryland, although he was not licensed in that jurisdiction, because he provided legal services on a temporary basis.

On March 8, 2008, grievant T.M. consulted respondent in connection with obtaining a divorce from her husband, D.M. The initial consultation took place at a Maryland McDonald's restaurant. T.M. told respondent that she wanted to divorce D.M. immediately, on the ground of adultery, and that she had the necessary proof to sustain her claim, thus, rendering the matter "a slam-dunk case." T.M. gave respondent information pertaining to D.M.'s paramour, various

financial accounts and paystubs, and a substantial amount of documentation concerning the extra-marital affair.

T.M. assumed that, because respondent attended a Maryland church and lived in Maryland, he was authorized to practice law in that state. She denied that respondent had told her that he was not admitted to the Maryland bar, or that another lawyer would be required to file the divorce paperwork and make court appearances.

Respondent asserted a belief that he had explained to T.M. that he was a New Jersey attorney, that his putative law partner, Charles Tucker, was a New York attorney, but that they both anticipated becoming Maryland attorneys "soon."[1] Respondent claimed that he had told T.M. that he could represent her because he worked with Gladys Weatherspoon, a licensed Maryland attorney.

In turn, T.M. denied that respondent had mentioned Weatherspoon to her until after T.M. had terminated his representation, in August 2009. At that time, he referred her to Weatherspoon, who declined to represent T.M. Respondent's claim that he could practice law in Maryland in concert with a licensed Maryland attorney is discussed in detail below.

[1] Charles Tucker was admitted to the Maryland bar on August 26, 2008.

Respondent agreed that D.M.'s adultery was a clear-cut case. However, he claimed that other issues, such as property and finances, were involved. Because respondent was not a Maryland attorney, he told T.M. that he would have to research Maryland law and review some previous matters that he had handled. He also informed her that he would draft a settlement agreement, which would eventually become the divorce decree.

When the issue of respondent's legal fees arose during the initial consultation, T.M. told respondent that she was not working, due to an injury, and, thus, "did not have a lot of money." They agreed to an initial retainer of $1,500. T.M. understood that respondent would let her know when the $1,500 had been exhausted, at which point they would "go from there." According to respondent, T.M. understood that the $1,500 was the initial retainer, that it would not cover his fee for the entire case, and that she would have to advance additional monies to respondent.

T.M. testified that respondent did not explain his hourly rate, estimate the total cost of the divorce, or tell her how often he would issue bills. She was not concerned about the cost of the divorce, because she considered the matter "an open and shut case." In addition, D.M. also wanted a divorce, and they had no

unemancipated children. T.M. acknowledged that she and D.M. jointly owned certain property.

On March 10, 2008, two days after the initial consultation, T.M. issued a $1,500 check to Morton & Tucker. The memo line contained the notation "retainer." On March 12, 2008, respondent deposited the check in a Wachovia custom business checking account that was designated Morton & Tucker, LLP T.M. Escrow (escrow account).

Also, on March 10, 2008, respondent presented T.M. with two documents. The first document contained the following banner:

MORTON & TUCKER, LLP
ATTORNEYS & COUNSELORS AT LAW
*NEW JERSEY/#NEW YORK/^WASHINGTON DC/+MARYLAND

*BENJAMIN MORTON, ESQ.
^DC WAIVER PENDING
+MD ADMISSION PENDING
CHARLES TUCKER, ESQ.
^DC WAIVER PENDING
+MD ADMISSION PENDING

FORMER ADDRESS:
1201 PENNSYLVANIA Ave, N.W. Suite 300
Washington, D.C. 20004

TEMPORARY MAILING ADDRESS:
2706 Hadley Drive
Waldorf, MD 206021
(TEL) 301-674-8943
(FAX) 866-345-1996

T.M. testified that she assumed that Charles Tucker was respondent's law partner. She never met with Tucker or talked to him on the phone. She did not understand the meaning of "MD ADMISSION PENDING" or "DC WAIVER PENDING," and respondent did not discuss it with her. She never met with respondent at the Waldorf, Maryland address.

The first document bore the heading "IMPORTANT LEGAL DOCUMENT" and was titled "Attorney/Client Fee Agreement and Statement of Client's Rights and Responsibilities." It contained a date of March 10, 2008, and a line for the client's name, above which T.M. printed her name. The second document, which T.M. signed, was titled "Statement of Client's Rights and Responsibilities" (statement of rights).

Although the statement of rights provided that T.M. was entitled to receive a written retainer agreement; to understand the proposed rates and retainer fee; and to receive a written itemized bill periodically, at least every 60 days, T.M. denied that respondent had complied with any of these requirements. In contrast, respondent claimed that he had given T.M. a retainer agreement, but that neither she nor he had the document.

On April 3, 2008, T.M. issued to Morton & Tucker, LLP a $35,000 check, with the notation "retainer" in the memo line. T.M. testified that the $35,000 represented settlement monies that she had received from an injury. When she gave the money to respondent, he had not yet sent her a bill. Indeed, she did not receive any bill until months later. On April 4, 2008, the $35,000 check was deposited in respondent's escrow account.

T.M. claimed that she had given the $35,000 to respondent to conceal the money from her husband. She denied that she had authorized respondent to draw down the funds to pay his legal fees. She understood that $1,500 was not the entire fee for the representation, and she did not disagree with respondent's statement that the $35,000 had to be designated a retainer because he could not hide money. Although T.M. did not intend to use the funds to pay respondent's bills, she acknowledged that she probably would have done so when the time came. That never happened, however, because respondent did not tell her that he had exhausted the initial $1,500.[2]

Respondent claimed that he told T.M. that he could place the $35,000 in his trust account and draw down the funds once the $1,500 was spent; that any balance would be returned to her; and that, if she wanted any of the funds in the interim, he would give them to her. Indeed, each time T.M. asked for money, he complied with her request. There was no suggestion that, in drawing down the funds to pay his legal fees, respondent misappropriated the monies.

From March through August 2008, respondent provided T.M. with monthly invoices that identified his rate as $150 per hour and contained descriptions of the work performed, although they did not identify the

[2] The complaint did not charge respondent with having violated RPC 1.2(d), RPC 8.4(c) or (d), or any other Rules, in respect of this improper escrow arrangement

corresponding dates of the services. Initially, the invoices totaled $9,000, but respondent and T.M. negotiated a decrease to $8,025, by reducing or eliminating charges for client conferences.

Despite the descriptions on the invoices, the record does not clarify the work that respondent actually performed during that time. OAE Assistant Chief of Investigations Jeanine E. Verdel reviewed T.M.'s file and noticed a pattern of repetitive and incomplete documents. For example, there were multiple copies of an incomplete form separation agreement, which was neither finalized nor incorporated in the divorce judgment.

The file also contained the results of internet searches on "how to do a divorce," Maryland divorce forms, and similar items. For example, the file contained materials geared toward pro se litigants, obtained from websites such as people-law.org and findlegalforms.com. From findlegalforms.com, respondent purchased Maryland divorce documents for $89.95. The forms were incomplete, and the dates were inconsistent. Respondent also obtained sample documents from other jurisdictions, including New Jersey. Some documents contained signature lines for Weatherspoon, but she had not signed them.

Respondent never filed a complaint for divorce against D.M., whose lawyer filed first. Moreover, respondent missed scheduled meetings, including

meetings with D.M.'s attorney, who, as a result, began negotiating with respondent via e-mail. T.M. did not know what legal services respondent had provided, because he failed to inform her of the actions he had taken or planned to take to proceed with her case. She did not know whether he had done anything with the adultery evidence she had provided to him.

During an interview with Verdel, respondent admitted that he represented T.M. and that he had practiced law in Maryland. He characterized T.M.'s divorce case as "pretty clear-cut." Respondent did not file a single document with a court in T.M.'s behalf.

When Verdel examined respondent's financial records, including his bank account statements from March 1, 2008 to December 31, 2009, she noted that, except for a $7,000 check issued to T.M. in July 2008, all disbursements from the escrow account were made via counter withdrawals. Specifically, on April 4, April 17, and May 5, 2018 counter withdrawals were made from the escrow account, in the amount of $1,000, $500, and $5,000, respectively. Thus, there were no corresponding canceled checks. Verdel was unable to determine the disposition of the funds, and T.M. denied having received the monies.

On July 9, 2008, a $7,000 check, issued to T.M. on July 3, 2008, posted to the escrow account. The memo line contained the notation "escrow withdrawal." T.M. received those funds.

On September 5, 2008, a counter withdrawal of $2,500 was made, which respondent applied to his outstanding fees. On September 15, 2008, a $10,000 counter withdrawal was made, which was given to T.M. On October 6, 2008, the last counter withdrawal, in the amount of $5,000, was taken from the escrow account. Verdel was unable to determine the disposition of the funds.

On October 22, 2008, the account was debited $5,500 and closed. Verdel confirmed that those funds were transferred to T.M.'s bank account.

Based on Verdel's review of the escrow account and T.M.'s personal account records, Verdel confirmed that respondent had returned $22,500 to T.M. Of the remaining $14,000, she credited to respondent $8,025, representing his total bill to T.M. Thus, respondent could not account for the $5,975 balance.

According to Verdel, T.M. had been consistent in her statements regarding the monies she had and had not received from respondent. Verdel conceded, however, that, due to T.M.'s memory issues, she stated during her February 24, 2018 interview that respondent had returned only $16,000 to her.

Verdel testified that, if a counter withdrawal were actually a transfer of funds, the bank statement would reflect a transfer having taken place, not a counter withdrawal. She acknowledged that the $5,975 was untraceable, due to the counter withdrawals. However, respondent never told her that he had earned the $5,975. Moreover, based on respondent's testimony, he was utterly unable to account for the $5,975, other than to say that T.M. "was given everything that she asked for including the final 5,500 and the 5,000, and I billed no more than 8,000."

In August 2009, any attorney-client relationship between respondent and T.M. ended. In December 2010, she and D.M. were divorced. T.M. did not have an attorney, and she did not use any material that respondent had prepared for her. She did not recall whether she had asked respondent for her file. The divorce did not include a property settlement agreement.

In January 2012, T.M. filed a grievance against respondent in Maryland. On June 22, 2012, Kendall R. Ruffatto, Esq., the Executive Secretary to the Maryland Commission, wrote the following letter to T.M., and served a copy of it on respondent:

> The complaint which you filed against Benjamin Morton, Esquire alleging misconduct, has been dismissed.

> The jurisdiction of the Attorney Grievance Commission is limited to a consideration of misconduct as defined by the Rules of Professional Conduct established by the Court of Appeals of Maryland. Your complaint, after any necessary investigation, was reviewed by the Attorney Grievance Commission. An insufficient basis was found to consider the conduct of the Respondent to be a violation of the Maryland Rules of Professional Conduct.
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> [Ex.R1.]

Respondent asserts that the dismissal of T.M.'s grievance constituted a decision on the merits.

Raymond Hein, Deputy Bar Counsel for the Maryland Commission, testified that the Maryland Commission determined not to take action against respondent, choosing instead to refer T.M.'s grievance to the OAE. Hein asserted that the determination was not based on a failure of proofs, but was "very much driven by practical reasons, and resource allocation issues." According to Hein, the Maryland Commission decided to take no further action against respondent because T.M.'s allegations pre-dated the 2009 consent order and, thus, "from a practical level, it made more sense to refer the complaint to New Jersey for whatever steps they may wish to take."

In respect of Ruffatto's June 22, 2012 letters to T.M. and respondent, Hein testified that it was normal practice for the executive secretary to send such

letters when the Commission dismisses a complaint, and that the reference to Maryland Rule 16-735 (no longer in effect) in the letter sent to respondent was standard in dismissal letters.[3]

Hein had recommended dismissal of the matters against respondent because Maryland disciplinary authorities believed it appropriate for New Jersey to handle T.M.'s complaint, based on respondent's admission to practice law in this State. The Maryland Commission accepted Hein's recommendation, and Ruffatto "then generated what [he knew] to have been standard form letters that were in use at that time notifying both the respondent and [T.M.] that the matter had been dismissed . . . in Maryland."

Although the Maryland Commission's file in respect of T.M.'s grievance had been destroyed pursuant to a document destruction policy, Hein recollected that his dismissal recommendation was not based on the merits; rather "it was better for New Jersey to deal with Mr. Morton . . . in light of the fact that Mr. Morton previously had been enjoined from practicing law in Maryland, and that he was not a licensed member of the Maryland state bar."

Despite the language in the letter, Hein did not believe that there was "any form letter that could have been used that differed from this in particular." In

[3] Maryland Rule 16-735 governed dismissal of ethics complaints without discipline.

his view, the Maryland Commission had determined to refer the matter to New Jersey and, thus, Hein "felt like this was the mechanism we needed to close the file here in Maryland, and this dismissal letter served that purpose." Hein acknowledged that the language of the letter was not consistent with the rationale for declining jurisdiction, "but for practical reasons, [he] probably made the decision that it wasn't something that [he] was going to challenge or question." He agreed that, given the language of the letter, "it is a reasonable interpretation to read the plain language . . . and believe that there was an insufficient basis found to consider [respondent's] conduct to be a violation of the Rules of Professional Conduct."

Hein opined that, in 2008, respondent violated Maryland RPC 5.5, because he did not have a license to practice law in Maryland. In Hein's view, although the Morton & Tucker letterhead indicated that neither respondent nor Tucker were admitted to practice law in Maryland, the firm was improperly holding itself out as authorized to practice law in Maryland, as no lawyers in the firm were licensed to practice in the state.

Hein also testified that Maryland has a "temporary basis" exception to the rule regarding the unauthorized practice of law. According to Hein, although Maryland RPC 5.5(c)(1) permitted an attorney without a license to practice law

on a temporary basis, respondent never provided any information to the Maryland Commission suggesting that he fell within that exception.

Hein agreed that a comment to Maryland RPC 5.5(c) stated that "[t]here are occasions in which a lawyer admitted to practice in another United States jurisdiction . . . may provide legal services on a temporary basis in this jurisdiction under circumstances that do not grant an unreasonable risk to the interest of the clients, the public or the courts." He also agreed with the following comment:

> There is no single test to determine whether a lawyer's services are provided on a "temporary" basis in this jurisdiction and may therefore be permissible under paragraph C. Services may be "temporary" even though the lawyer provides services in this jurisdiction on a recurring basis or for an extended period of time as when the lawyer is representing a client in a single lengthy negotiation or litigation.
>
> [2T75-15 to 23.][4]

For his part, respondent testified that, on discharge from the military, he, Tucker and another attorney had discussed opening a firm in the Maryland area. Respondent and his putative partners read the Maryland rules regarding the practice of law and believed that they complied with the exception pertaining to

[4] "2T" refers to the transcript of the March 21, 2019 hearing date.

"temporary practice." Respondent also asserted that the intent of the letterhead was to put people on notice that they were not yet licensed in Maryland.

Without reservation, respondent admitted that he is not, and has never been, a member of the Maryland bar. He conceded that, by representing T.M., he had engaged in the practice of law. However, he contended that, under then Maryland RPC 5.5, he could maintain temporary status by associating with Weatherspoon. In his view, his temporary status had been the basis for the dismissal of T.M.'s grievance.

Respondent readily admitted that he had given T.M. legal advice, but had neither filed any documents in her behalf nor appeared in court; that no document that he had drafted was ever signed in T.M.'s case; and that he had missed two or three meetings with D.M.'s lawyer.

The DEC found that respondent violated RPC 1.5(a), RPC 1.16(a)(1), RPC 5.5(a), and RPC 7.1(a)(1).

First, the DEC determined that respondent engaged in the unauthorized practice of law in Maryland because he neither was admitted to practice law in that state nor complied with the "temporary basis" exception to Maryland RPC 5.5(a). The panel observed that the Morton & Tucker letterhead conveyed the

impression that respondent and Tucker had formed "an actual Maryland law firm, which is not indicative of practicing on a temporary basis."

Further, the DEC found that respondent could not show that his practice was "undertaken in association with a lawyer who [was] admitted to practice" in Maryland because Tucker was not admitted to the Maryland bar during T.M.'s representation, and Weatherspoon did not actively participate in the matter. Rather, Weatherspoon's only connection to the case occurred after T.M. had terminated the representation and respondent referred her to Weatherspoon, who knew nothing about the case and declined the representation. Finally, respondent's representation created an unreasonable risk to T.M.'s interests, inasmuch as he was unfamiliar with Maryland law, but led T.M. to believe the opposite and failed to maintain "proper access to client funds."

The DEC rejected respondent's claim that the Maryland Commission's administrative dismissal of T.M.'s grievance constituted a binding determination on the merits. Thus, the DEC concluded that the OAE was entitled to institute this disciplinary action against respondent based on his conduct in Maryland.

Next, the DEC determined that, by violating Maryland RPC 5.5(a) and (b),[5] respondent also violated RPC 1.16(a)(1).

In addition, the DEC found that respondent violated RPC 7.1(a)(1), by leading T.M. to believe that he was authorized to represent, and capable of representing, her interests in a Maryland divorce action. The DEC rejected respondent's assertions that he had explained to T.M. the "jurisdictional limitations" imposed on him. Further, the letterhead identified Morton & Tucker as an LLP, which was false, and the various markings next to respondent's and Tucker's names were insufficient to clarify their status in Maryland because the font was small, and respondent's admission in Maryland was not "legitimately pending," given that T.M. had retained respondent two years after he had taken the bar examination.

In addition, the DEC found that respondent's invoices to T.M. were false or misleading. The record lacked any evidence that respondent had performed the services identified on the invoices. Moreover, the invoices did not identify the dates of the services, or indicate when the invoices were submitted to T.M.

[5] Maryland RPC 5.5(b) prohibits an attorney not admitted to practice in the state to establish an office for the practice of law or to hold out to the public that the attorney is admitted to practice in the jurisdiction.

or when the fee would be earned. The DEC, thus, found that respondent violated RPC 7.1(a)(1) in respect of his invoices.

Finally, the DEC determined that respondent's fee was unreasonable. First, the $14,000 in total fees disbursed from the escrow account exceeded the agreed-upon revised fee of $8,025 by $5,975. Second, the client's file, as a whole, demonstrated that, in T.M.'s case, respondent had "attempted to use online resources designed for pro se litigants to develop divorce documents." In this respect, the DEC noted that the file contained "plentiful inapplicable material," such as samples of documents used in New York divorce cases, two copies of a do-it-yourself guide for uncontested Maryland divorces, a form complaint and "other publicly available information," a Maryland divorce forms package that respondent had purchased for $89.95, and multiple copies of unsigned documents for T.M.'s case that were similar to the online resources and contained no editing other than incorrect captions and errors.

Applying the eight factors for determining whether a fee is reasonable, the DEC found that "there was little novel or difficult about [T.M.'s] uncontested divorce," and that the contents of the client's file demonstrated respondent's belief that "the matter could be handled with off-the-shelf, boilerplate documents available to laypeople at little to no cost" (RPC 1.5(a)(1)); there was

no showing that respondent's representation of T.M. would preclude him from representing other clients, as it was unlawful for him to have any clients, given his lack of a Maryland law license, and, further, he devoted little time to the representation, as reflected on the invoices (RPC 1.5(a)(2)); nothing in the record suggested that a $36,500 retainer was either "a reasonable or customary fee in the locality for similar legal services" and, further, respondent's instruction that T.M. write "retainer" on the memo line of the $35,000 check was "unconscionable" (RPC 1.5(a)(3)); the results obtained were "non-existent," and, further, T.M. had represented herself when the divorce was finalized (RPC 1.5(a)(4)); neither the client nor the circumstances placed time limitations on respondent, who failed to attend scheduled meetings that would have advanced T.M.'s representation (RPC 1.5(a)(5)); prior to respondent's representation of T.M., they did not know each other and, thus, had no relationship outside of the divorce matter (RPC 1.5(a)(6)); as respondent's level of service was "similar to what a lay person would do on a pro se basis," respondent's "experience, reputation, and ability" did not render the fee reasonable (RPC 1.5(a)(7)); and, finally, although the fee was not contingent, there was no clear and convincing evidence whether the fee was fixed or based on an hourly rate (RPC 1.5(a)(8)).

Based on the above analysis, the DEC concluded that respondent's $8,025 fee "for the limited, incomplete services he provided relative to [T.M.'s] uncontested divorce constituted fee overreaching beyond mere unreasonableness." According to the DEC, respondent "could not possibly have spent more than ten hours in representing [T.M.]." Based on a $150 hourly rate, the "maximum reasonable bill" would have been $1,500. Although the DEC could not direct respondent to return the entire fee taken, the DEC found that his conduct in retaining $5,975 more than the agreed-upon $8,025 fee was unreasonable and, thus, he violated RPC 1.5(a).

The DEC recommended that respondent receive a three-month suspension and be required to make restitution to T.M. in the amount of $5,975. In this regard, the DEC found that T.M. was credible, but respondent was not, regarding the amount of counter withdrawals that he claimed he had turned over to her.

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.

Respondent admitted that he was not licensed to practice law in Maryland. He further admitted that, notwithstanding the lack of a Maryland law license, he represented T.M. in her Maryland divorce action. When a New Jersey attorney,

who is not licensed to practice law in a particular state, represents clients in that state, the attorney violates New Jersey RPC 5.5(a)(1). See In re Ehrlich, 235 N.J. 321 (2018) (attorney licensed to practice law in New Jersey, New York, Washington, D.C., and Florida, but who maintained an office for the practice of law in Florida, violated New Jersey RPC 5.5(a)(1) when he undertook the representation of clients who resided in Maryland, where he was not admitted to the bar).

Respondent's defense that, despite the lack of a Maryland law license, he was permitted to represent T.M. under the "temporary basis" exception is without merit. Maryland Rule 19-305.50(c) provides, in pertinent part:

> (c) An attorney admitted in another United States jurisdiction . . ., may provide legal services on a temporary basis in this jurisdiction that:
>
> (1) are undertaken in association with an attorney who is admitted to practice in this jurisdiction and who actively participates in the matter. . . .

Here, respondent did not "provide legal services on a temporary basis." Rather, he had been improperly providing legal services to clients in Maryland since at least February 2007. In addition, respondent did not represent T.M. in association with a licensed attorney who actively participated in the matter. Although respondent identified Weatherspoon as the licensed attorney who

actively participated in the matter, the evidence does not support a finding that she had anything to do with the T.M. divorce matter. Rather, respondent did not involve her until after T.M. had terminated the representation, at which time he referred her to Weatherspoon, who declined the representation.

By failing to satisfy the above exception to the Maryland Rule prohibiting the unauthorized practice of law in that state, respondent violated Maryland Rule 19-305.5(c)(1) and, thus, New Jersey RPC 5.5(a)(1). It follows that respondent also violated New Jersey RPC 1.16(a)(1), which prohibits an attorney from representing a client if the representation will violate the Rules of Professional Conduct or other law. For purposes of imposing discipline, we determine to treat those separate violations as one.

RPC 7.1(a) prohibits a lawyer from making false or misleading communications about the lawyer, the lawyer's services, or any matter in which the lawyer has or seeks a professional involvement. Under the Rule, a communication is false or misleading if it "contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading."

Here, even assuming the truth of respondent's claim that he informed T.M. that he was not licensed to practice law in Maryland, but that he could represent

her because he had other attorneys who could work on her case, his claim about the presence of licensed Maryland attorneys was false. Tucker could not represent T.M. because he was not admitted to the Maryland bar during most of the representation and, further, T.M. had never spoken to him. Although Weatherspoon was licensed to practice law in Maryland, she was not involved in the representation.

Furthermore, respondent's letterhead represented that there was a law firm called Morton & Tucker, LLP and that respondent's admission to the Maryland bar was pending. Respondent passed the bar examination in 2006. Regardless of the reason he had not yet been admitted in March 2008, he could not make a credible claim that he had a pending application nearly two years after passing the examination. Moreover, the law firm was not an actual LLP. Respondent, thus, violated RPC 7.1(a)(1).

In respect of the RPC 1.5(a) charge, both the OAE and the DEC analyzed the Rule against the $14,000 disbursed to respondent and the $8,025 billed to T.M. RPC 1.5(a) is simple: "A lawyer's fee shall be reasonable." The $14,000 disbursed to respondent was not a fee. Rather, it was an "overdisbursement." Respondent's fee was $8,025.

The DEC undertook a thorough analysis based on the eight factors that must be considered in determining the reasonableness of a fee and concluded that $8,025 was unreasonable because the divorce was uncontested and uncomplicated; there was no showing that the representation precluded respondent from representing other clients or evidence that a $36,500 retainer was customarily charged in the locality; the non-existent results; the absence of time limitations imposed on respondent; the absence of a relationship outside of the divorce matter; respondent's lack of experience, reputation, and ability; and the absence of clarity regarding the nature of the fee (i.e., hourly or flat rate). In the DEC's view, the maximum bill should have been $1,500.

Some of the DEC's analysis misses the mark, however. For example, RPC 1.5(a)(3) refers to the fee customarily charged, not the retainer received. RPC 1.5(a)(6) refers to the nature and length of the professional relationship. Nevertheless, given respondent's minimal work on the case, and his failure to file a complaint, to attend scheduled meetings, or to perform any work that required an attorney, we agree with the DEC's conclusion that respondent charged an unreasonable fee.

The DEC valued respondent's work at $1,500, but stated: "If we had the ability to do so, we would direct Respondent to return all of [T.M.'s] funds to

her." Based on the facts of this case and applicable precedent, neither may we, as it is our policy to reserve such fee determinations for cases in which it is proven, by clear and convincing evidence, that an attorney accepted a fee but did no work in behalf of the client. However, respondent did retain $5,975 more than he billed T.M., under their improper escrow arrangement, and, to that extent, we determine to require him to return the funds to her, within sixty days of the date of the Court's Order.

In sum, we find that respondent violated RPC 1.5(a), RPC 1.16(a)(1), RPC 5.5(a)(1), and RPC 7.1(a)(1). The sole issue left for us to determine is the appropriate quantum of discipline for respondent's misconduct.

Discipline for fee overreaching has ranged from a reprimand to disbarment. See, e.g., In re Read, 170 N.J. 319 (2002) (reprimand for charging grossly excessive fees in two estate matters and presenting inflated records to justify them; strong mitigating factors considered); In re Hinnant, 121 N.J. 395 (1990) (reprimand for attorney who attempted to collect a $21,000 fee in a real estate transaction, including a commission on the purchase price; conflict of interest also found); In re Verni, 172 N.J. 315 (2002) (three-month suspension imposed on attorney for charging excessive fees in three matters and knowingly making false statements to disciplinary authorities; the attorney made a divorce

case appear more complicated than it was in order to justify a higher fee and charged a fee for the preparation of a document he never prepared; the fee arbitration committee reduced his $8,700 fee by almost half for padding his time); In re Thompson, 135 N.J. 125 (1994) (three-month suspension imposed on attorney for charging $2,250 to file two identical motions necessitated by the attorney's own neglect and to file a pre-trial motion, which she never prepared; misrepresentations considered in aggravation, and illness considered in mitigation); and In re Wolk, 82 N.J. 326 (1980) (disbarment for gross and intentional exaggeration of services rendered on behalf of an eight-year-old paralyzed boy and for enticing a recently-widowed client to invest in a building owned by the attorney, without properly safeguarding her rights).

The discipline imposed on attorneys who practice law in jurisdictions where they are not licensed to do so ranges from an admonition to a suspension. See, e.g., In the Matter of Duane T. Phillips, DRB 09-402 (February 26, 2010) (admonition imposed on attorney, who was not admitted in Nevada but 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); In re Winograd, 237 N.J. 404 (2019) (reprimand imposed on attorney who practiced law in New Jersey when he was

not yet licensed to do so; the attorney also violated RPC 8.4(c) (conduct involving dishonesty, deceit, fraud or misrepresentation), by misleading the client as to his status; mitigating factors included the attorney's acknowledgement of wrongdoing, the lack of personal gain, and the absence of harm to the client); In re Bronson, 197 N.J. 17 (2008) (reprimand imposed on attorney who 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); In re Nadel, 227 N.J. 231 (2016) (censure imposed on attorney who represented more than seventy-five Delaware residents in claims arising out of accidents that occurred in that state); In re Butler, 215 N.J. 302 (2013) (censure imposed on attorney who, for more than two years, 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 the law firm was to pay the costs of her admission; the attorney provided no explanation for her failure to follow through with the requirement that she gain admission to the Tennessee bar; the attorney was suspended for sixty days in Tennessee, where the disciplinary authorities determined that her misconduct stemmed from a

"dishonest or selfish motive"); and In re Lawrence, 170 N.J. 598 (2002) (in a default matter, the attorney received a three-month suspension for practicing 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).

Admonitions and reprimands have been imposed on attorneys who, in their quest to solicit clients, make false or misleading communications in their general advertising campaigns. See, e.g., In the Matter of Jean D. Larosiliere, DRB 02-128 (March 20, 2003) (admonition imposed on attorney for allowing the name of a law school graduate to appear on the letterhead in a manner indicating that the individual was a licensed attorney, and allowing a California lawyer not admitted in New Jersey to sign letters on the firm's letterhead with the designation "Esq." after the attorney's name; the attorney also lacked diligence and failed to communicate with a client); In the Matter of Ernest H. Thompson, Jr., DRB 97-054 (June 5, 1997) (attorney received an admonition for making misleading statements in a targeted direct mail solicitation flyer sent to

an individual whose residence was about to be sold at a sheriff's sale); In re DiCiurcio, 212 N.J. 109 (2012) and In re DiCiurcio II, 212 N.J. 110 (2012) (companion cases; reprimands for attorneys who sent direct mail solicitation letters that violated RPC 7.1(a)(1); one misled a recipient that she could lose her driver's license for a traffic violation, three other letters failed to include required language that violated Attorney Advertising Guidelines and an opinion from the Committee on Attorney Advertising); and In re Mennie, 174 N.J. 335 (2002) (reprimand for attorney who placed a Yellow Pages advertisement that listed several jury verdict awards, including one for $7 million, even though that award had been set aside on the ground that it was "grossly excessive;" attorney placed similar ads, a week apart, in the Asbury Park Press, which misrepresented the combined number of years that the attorney and one of his partners had been practicing law).

In this case, a reprimand would have been sufficient if respondent simply had represented only one client, for a short duration, while not licensed to do so. However, in our view, several aggravating factors call for enhancement of the quantum of discipline to a suspension. First, respondent has a disciplinary history that includes a reprimand and a three-month suspension. Second, and

more troubling, respondent has a history of engaging in the unauthorized practice of law in Maryland.

In 2007, a judge reported respondent to the Maryland Commission and, despite respondent's promise that he would not practice law until he was admitted to the Maryland bar, he began representing T.M. the following year. In 2009, while respondent was representing T.M., he, through the Morton Group, LLP, held himself out as licensed to practice law in Maryland, which led to the October 2009 consent order. In short, respondent either does not understand or does not care that he is prohibited from practicing law in Maryland without a Maryland law license.

Third, respondent's misconduct was compounded by various ways in which he misled, or attempted to mislead, T.M. He led her to believe that he was authorized to practice law in Maryland, and the firm's letterhead contained misrepresentations about his status as a licensed attorney in that state.

Fourth, respondent's demonstrated lack of knowledge of even the basics of Maryland divorce law, and his failure to accomplish anything in his client's behalf, render him a menace to unsuspecting clients, such as T.M., who must be protected from him. Although respondent's duplicity occurred in Maryland, the residents of New Jersey must be protected from an attorney, such as respondent,

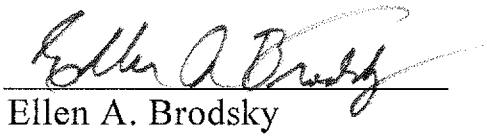
who pays no regard to the fundamental regulations governing his privilege to practice law.

For the reasons stated above, we determine to impose a three-month suspension and to require respondent to return $5,975 to T.M. within sixty days of the date of the Court's Order in this matter.

Member Zmirich voted to impose a six-month suspension. Vice-Chair Gallipoli and Members Joseph and Petrou 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 Benjamin Morton
Docket No. DRB 19-353

Argued: February 20, 2020

Decided: June 18, 2020

Disposition: Three-Month Suspension

Members	Three-Month Suspension	Six-Month Suspension	Recused	Did Not Participate
Clark	X			
Gallipoli				X
Boyer	X			
Hoberman	X			
Joseph				X
Petrou				X
Rivera	X			
Singer	X			
Zmirich		X		
Total:	5	1	0	3

Ellen A. Brodsky
Chief Counsel