Supreme Court of New Jersey
Disciplinary Review Board
Docket No. DRB 19-468
District Docket No. XIV-2019-0332E

In the Matter of	:
Ronald W. Horowitz	:
An Attorney at Law	:

Decision

Argued: June 18, 2020

Decided: November 18, 2020

Ashley L. Kolata-Guzik appeared in 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 motion for reciprocal discipline filed by the Office of Attorney Ethics (OAE), pursuant to R. 1:20-14(a), following respondent's conditional guilty plea for a consent judgment with the Florida Bar. On April 19, 2018, the Supreme Court of Florida entered an order imposing an

admonition on respondent for a violation of the equivalent of New Jersey RPC 8.4(d) (conduct prejudicial to the administration of justice).

The OAE contended that the facts support a finding that respondent's misconduct also violated the equivalents of New Jersey RPC 3.3(a)(4) (offering evidence that the lawyer knows to be false and failing to take reasonable remedial measures if the lawyer learns that the evidence is false); RPC 4.1(a)(1) (making a false statement of material fact or law to a third person); RPC 4.2 (communication with a person represented by counsel); RPC 4.3 (in dealing on behalf of a client with a person who is not represented by counsel, a lawyer shall not state or imply that the lawyer is disinterested); and RPC 4.4(a) (conduct that has no substantial purpose other than to embarrass, delay, or burden a third person).

For the reasons set forth below, we determine to grant the OAE's motion, but impose no discipline.

Respondent earned admission to the New Jersey bar in 1983, the Florida bar in 1985, and the New York bar in 1990. In 2019, he entered retired status in New Jersey. At all relevant times, he maintained an office for the practice of law in Palm Coast, Florida.

In 1997, respondent received an admonition for violating RPC 4.1(a)(1). In the Matter of Ronald W. Horowitz, DRB 96-420 (January 16, 1997). In that

matter, respondent misrepresented to a creditor the amount of money owed to his client.

On December 23, 2014, respondent telephonically attended a continuing legal education (CLE) seminar administered by Rossdale CLE, Inc. (Rossdale), which was scheduled for a ninety-minute duration. During the seminar, registrants were encouraged to "dial in" with any questions. Respondent called with questions, he was placed on hold for approximately fifteen minutes, and the recipient of respondent's call could not answer his questions. Thereafter, neither of his questions were posed to the panel. Respondent felt that he wasted approximately twenty minutes, because, while on the telephone, he could not listen to the panel presentation.

By letter dated January 6, 2015, respondent complained to Susan Lunden, a Rossdale employee, about the manner in which the seminar had been conducted. He concluded the letter by stating that this would be his first and last Rossdale seminar, unless he received "adequate and appropriate compensation."

On June 9, 2015, Brian White, another Rossdale employee, submitted an ethics grievance to the Florida Bar, alleging that respondent had contacted Rossdale regarding a dispute about the seminar and, rather than speaking with the company's legal counsel, made threats to an employee of the company. Specifically, White claimed that respondent had threatened Lunden, a

represented party, by leaving disturbing voicemails on her home telephone, and by sending threatening e-mails to her personal e-mail account. By letter dated September 29, 2015, Carrie Constance Lee, Florida Bar Counsel, informed White that, because there was insufficient evidence to establish that respondent had violated any Florida RPCs, the case had been closed.

More than a year later, on January 6, 2017, respondent wrote to White stating, "[n]ow that your vicious and false Bar complaint has been dismissed, and I never received a refund for the above-referenced seminar, I will be filing suit unless I receive a check in the sum of $500 within seven (7) days." The letter further stated that, because respondent did "not anticipate receiving the refund," he looked forward to meeting White in court, should Rossdale not default. On the same date, Lunden submitted a second ethics grievance to the Florida Bar, referencing the 2015 complaint. In this grievance, she alleged that respondent had again contacted represented parties to "demand a $500 shakedown for, among other reasons, the filing of a bar complaint."

On February 15, 2017, respondent initiated a small claims lawsuit against Rossdale, in Flagler County, Florida, asserting that he was entitled to $500, plus interest, attorneys' fees, and costs.

From March 24 through May 23, 2017, following the filing of Lunden's grievance, respondent and the Florida Bar corresponded. During the course of

these communications, respondent learned that the actual amount he had paid for the seminar was only $149. Thereafter, the Florida Bar subpoenaed respondent to appear for a sworn statement, which occurred on November 16, 2017.

During his sworn statement, respondent denied having made threatening phone calls to Lunden's home telephone, leaving her disturbing voicemails, or sending threatening e-mails to her. He conceded, however, that he had contacted Rossdale's employees, despite knowing that they were represented, and had made no effort to identify Rossdale's attorney. He maintained that, under the Florida RPCs, because he was representing himself, and did not know the identity of Rossdale's attorney, he could communicate with the individuals he believed "had wronged" him, because he was "allowed to talk to the other party to a transaction." Respondent denied that he had a responsibility to identify Rossdale's counsel, even after he was notified that Rossdale was represented, and further denied learning the identity of Rossdale's counsel until mid-June 2017.

Respondent confirmed that he had sent a letter demanding $500 from Rossdale and had signed the statement of claim alleging he was owed the same amount. He claimed that, at the time he sent the demand, he had no documentation to support the amount he had paid, because, in March 2015, a

house fire had destroyed his records. Therefore, he estimated the cost at $500, including the seminar cost, interest, attorneys' fees, and punitive or treble damages if he could establish consumer fraud, had he proceeded to trial.

On reflection, respondent believed that his demand for $500 and his filing of a lawsuit were warranted, because Rossdale's response to him had been unprofessional. He admitted that, rather than alleging in his statement of claim that he had paid $500 for the seminar, he should have clarified that he was seeking $500 for all his alleged damages.

Respondent acknowledged his ethics obligation to correct his statement of claim after learning that it was inaccurate. He explained that, at the time of his sworn statement, he had not yet amended his statement of claim, because he was waiting to see how the Florida Bar investigation would conclude. He claimed that, once the investigation concluded, he would either resume the case and amend the statement, or dismiss the case and, thus, eliminate the need to amend it. Respondent denied any intention to mislead or deceive anyone by filing his claim for $500.

On March 12, 2018, respondent entered a conditional guilty plea for a consent judgment, admitting that he had violated R. Regulating Fla. Bar 4-

8.4(d).[1] In his guilty plea, respondent acknowledged that he acted freely and voluntarily, and without fear or threat of coercion. He entered the guilty plea on the conditions that the Grievance Committee Chair would issue a letter of admonishment for minor misconduct; he would attend a professionalism workshop within six months of the date of the Supreme Court of Florida order approving the consent judgment; and he would pay the Florida Bar's disciplinary costs.

On March 15, 2018, after entering his guilty plea, but before the Supreme Court of Florida entered an order approving it, respondent sent a letter, via e-mail, to Jordan A. Dresnick, Esq., a member of Rossdale's Office of General Counsel. In the letter, respondent informed Dresnick that he had filed a lawsuit against Rossdale and enclosed a copy of an amended statement of claim and amended statement of responsibility. Respondent asked Dresnick to sign an enclosed waiver of service of process, and notified him that, if he did not, Rossdale would be required, under the Florida Rules of Civil Procedure, to pay the cost of service, unless good cause was shown for its failure to return the waiver.

[1] That rule states, in relevant part, that "[a] lawyer shall not . . . engage in conduct in connection with the practice of law that is prejudicial to the administration of justice . . . ."

On April 19, 2018, the Supreme Court of Florida entered an unpublished order approving respondent's guilty plea and consent judgment and imposed an admonition for his violation of R. Regulating Fla. Bar 4-8.4(d). The order required respondent to comply with all terms and conditions of the consent judgment and to pay $1,250 in costs.

On April 25, 2018, the Seventh Judicial Circuit Grievance Committee "B" Chair, Thomas E. Cushman, issued an admonishment letter, pursuant to the Supreme Court of Florida's order. The letter provided that respondent's "misconduct in this matter, while found to be minor and perhaps unintentionally committed, is nevertheless a violation of the Rules Regulating the Florida Bar."

On June 27, 2019, the OAE asked respondent to produce information regarding his Florida discipline. On July 18, 2019, respondent provided the OAE with copies of the consent judgment and the Supreme Court of Florida's order. He asserted that his "busy practice warranted that [he] accept an admonition," and the conditions and terms of the consent judgment and represented that, in October 2018, he had ceased practicing law.

On December 18, 2019, the OAE submitted to us a brief in support of its motion for reciprocal discipline. It acknowledged that, in February 2019, respondent had retired from the practice of law in New Jersey, but noted that we

retain jurisdiction to impose reciprocal discipline because respondent's misconduct in Florida had occurred before he retired.

The OAE argued that, under R. 1:20-14(a)(4)(E), respondent's unethical conduct warrants substantially different discipline in New Jersey, and recommended that we impose a reprimand. The OAE contended that the facts underlying respondent's guilty plea support violations of the following New Jersey Rules: RPC 3.3(a)(4); RPC 4.1(a)(1); RPC 4.2; RPC 4.3; RPC 4.4(a); and RPC 8.4(d). The OAE maintained that respondent violated these Rules by communicating with represented individuals and failing to promptly amend his lawsuit, after he had learned that his pleadings were incorrect. The OAE asserted that respondent's act of filing a complaint using information he made "little to no effort to verify" wasted "judicial resources by requiring judicial consideration of a false claim." In aggravation, the OAE cited respondent's failure to report his Florida admonition to the OAE, and his 1997 admonition for violating RPC 4.1(a)(1).

In his brief, respondent asked us to deny the OAE's motion or, in the alternative, to impose the same discipline as the Florida Bar, which he characterized as a "private admonition." He asserted that he had pleaded guilty, and entered into a consent judgment, because it was the most expedient way to resolve the matter, in light of his busy practice, and because he already had

participated in one proceeding regarding this matter, presumably referring to the first grievance that had been dismissed.

In respect of the merits of the OAE's motion, respondent claimed that his conduct did not involve his role as an attorney, because "the representation of a client, which is the practice of law, was absent," and that we, thus, should not consider the Florida consent judgment as conclusive proof of a violation, as R. 1:20-14(a)(5) provides. Further, respondent asserted that, pursuant to R. 1:20-14(a)(4)(B), the consent judgment does not apply to him, because the subject conduct does not violate any New Jersey RPC. Respondent next argued that the alleged RPC 4.2 violation should be dismissed, because this Rule applies only when a lawyer represents a client, not when a lawyer is self-represented. Respondent described his filing of a statement of claim with an inflated amount of damages as "an inadvertent and harmless error," because he had made a bona fide estimate of the cost of the seminar. He also asserted that he amended the statement of claim after he learned that the actual amount was $149, but did not specify the timing of that amendment.

Respondent also advanced three arguments for dismissal of all RPCs charged in connection with his statement of claim. First, he contended that New Jersey Rule of Civil Procedure 4:9-1 "permits a party to amend any pleading as a matter of course at any time before a responsive pleading is served," and

asserted that his amended statement of claim "was filed and served before Rossdale was served and before it formally appeared." Second, he argued that New Jersey Rule of Civil Procedure 4:19-2 "permits a pleading to conform to the trial evidence." Third, he denied having violated RPC 3.3(a)(4), because the amended statement of claim "was filed long before the very first August 2018 hearing," and the "subject pleading was not a statement made to others."

Finally, respondent argued that we should dismiss the asserted RPC 8.4(d) charge, because the OAE's claim that judicial resources had been wasted is inaccurate and unsupported by the record. Further, respondent factually distinguished his conduct from that of the attorneys in the cases that the OAE cited, emphasizing that the attorneys in those cases disobeyed court orders or failed to appear in court.

Respondent further asked us to deny the OAE's request for enhanced discipline, should we grant the OAE's motion for reciprocal discipline. He asserted that we should not consider, in aggravation, his failure to inform the OAE about his Florida discipline, because he was unaware of the Rule requiring notification, and once he learned of it, he promptly complied by sending a copy of the Florida consent judgment to the OAE.

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 Florida, the standard of proof in attorney disciplinary matters is clear and convincing evidence. Florida Bar v. Forrester, 916 So.2d 647 (2005). Moreover, respondent freely and voluntarily stipulated to his Florida misconduct.

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:
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> (A) the disciplinary or disability order of the foreign jurisdiction was not entered;
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> (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 followed 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.

The OAE asserts that subsection (E) applies in this matter because the unethical conduct warrants substantially different discipline.

We determine to grant the OAE's motion for reciprocal discipline and conclude that the facts set forth in respondent's sworn statement and guilty plea conclusively support a finding that he violated RPC 4.2. We dismiss, however, the additional RPC violations that the OAE urged us to find. The evidence in the case supports the finding that respondent repeatedly, and unapologetically, communicated with Rossdale's employees, in violation of RPC 4.2. That Rule prohibits a lawyer from communicating with a person about the subject of a matter when the attorney knows, or reasonably should know, that the person is represented, unless the attorney has the consent of his or her adversary. Respondent admitted, both in his sworn statement, and in his plea agreement, that he communicated with Rossdale employees, whom he knew were represented. There is no doubt that, following the filing of the first Florida ethics grievance, respondent knew that Rossdale was represented by counsel.

Respondent's argument that he did not violate RPC 4.2, because he was acting pro se, denies our state's clear disciplinary precedent holding that an attorney always is bound by the RPCs; that his duty was neither eliminated nor diminished by his pro se status in the litigation; and that a nonlawyer pro se party is prohibited from communicating with represented parties, without the consent of opposing counsel. See In the Matter of Thomas Kane, DRB (October 10, 2012) (attorney who acted pro se in a divorce proceeding against his wife was charged with two violations of RPC 4.2; we dismissed both charges, finding that the attorney had the prior consent of his adversary to contact his represented wife, not based on a finding that the Rule was inapplicable to the facts) (slip op. at 19-20); In re Kane, 212 N.J. 476 (2012) (affirming Board's findings). Thus, we reject respondent's unsupported arguments to the contrary, and find that he violated RPC 4.2.

We dismiss, however, the RPC 3.3(a)(4); RPC 4.1(a)(1); RPC 4.3; RPC 4.4(a); and RPC 8.4(d) charges for lack of clear and convincing evidence. Specifically, in respect of the RPC 3.3(a)(4) and RPC 4.1(a)(1) charges, the record contains insufficient evidence for us to conclude that respondent had actual knowledge that he was making a false statement of material fact or law to a tribunal or third person when he filed the statement of claim that the CLE seminar cost $500. Respondent's unrefuted testimony in Florida was that he

"approximated" the amount, because, after a fire at his residence destroyed his records, he did not have information specifying the cost of the seminar. Further, respondent asserted that, after he learned that the cost of the seminar was only $149, he informed the Florida Bar investigators that, if he chose to continue the lawsuit, he would amend the statement of claim to reflect the actual amount he paid. Later, respondent did amend the statement of claim.

In respect of RPC 4.3, the record does not support the charge that respondent stated or implied to an unrepresented person that he was disinterested in the Rossdale matter. Rather, his interest was apparent from the beginning of his correspondence with Rossdale employees. Thus, because there was no evidence in the record to support the fact that any member of Rossdale believed respondent was disinterested in the matter, we dismiss the RPC 4.3 charge.

Further, the record does not support the charged RPC 4.4(a) violation. The OAE asserted that respondent's communications with Lunden were intended to embarrass, delay, or burden her. However, although Lunden claimed, in an ethics grievance, that respondent harassed her, by telephone and e-mail, the record includes no credible evidence – documentary, testimonial, or otherwise – of respondent's alleged improper communications. Respondent repeatedly and unequivocally denied these allegations in his sworn statement to Florida Bar investigators, who did not refute his position. Moreover, although respondent

stated that his actions were warranted, because Rossdale's response to his complaints were so "unprofessional," he did not concede that he had filed a lawsuit to embarrass or burden Rossdale or its employees. Thus, we dismiss the RPC 4.4(a) charge.

Finally, we dismiss the charge that respondent violated RPC 8.4(d), because the evidence does not support the OAE's assertion that any resources were wasted by judicial consideration of a false claim.

In sum, we find that respondent violated RPC 4.2. We dismiss the remaining charges that he violated RPC 3.3(a)(4); RPC 4.1(a)(1); RPC 4.3; RPC 4.4(a); and RPC 8.4(d). The only remaining issue for our determination is the appropriate quantum of discipline to be imposed for respondent's misconduct.

Attorneys found guilty of communicating with represented persons have received discipline ranging from an admonition to a censure, depending on the presence of other violations and consideration of aggravating and mitigating factors. See, e.g., In the Matter of Mitchell L. Mullen, DRB 14-287 (January 16, 2015) (admonition for attorney who, in the course of an e-mail chain, communicated directly with the grievant on at least three occasions, when he knew or should have known that the grievant was represented by counsel; the communications involved the subject of the representation; the attorney also sent a notice of deposition directly to the grievant and never attempted to notify

opposing counsel of the deposition date, in violation of RPC 4.2; in mitigation, we considered the fact that the attorney's conduct was minor and caused no harm to the grievant, and that he had been a member of the bar for thirty-nine years, with no disciplinary record); In re Tyler, 204 N.J. 629 (2011) (reprimand for attorney who, in one of six bankruptcy matters, communicated directly with the client about a disgorgement order in the matter, although she knew or should have known that subsequent counsel had been engaged, a violation of RPC 4.2; gross neglect and pattern of neglect, lack of diligence, and failure to communicate with the clients also found; in mitigation, the attorney had no prior discipline and was struggling with medical issues at the time of the misconduct); and In re Veitch, 216 N.J. 162 (2013) (censure for attorney who, in a criminal matter, communicated with his client's co-defendant about the merits of the criminal case, even though counsel for the co-defendant previously had denied the attorney's request to contact his client, a violation of RPC 4.2; the attorney's unblemished disciplinary history of thirty-eight years mitigated against a term of suspension, and neither any party nor the judicial system suffered any actual harm).

In aggravation, we consider that, although respondent failed to timely report his out-of-state discipline, once he became aware of the requirement, he promptly complied by providing the OAE with the documents relating to his

Florida discipline. Finally, we consider that respondent has a disciplinary history, albeit remote. Prior to this matter, however, respondent had been without formal discipline for more than twenty years. In mitigation, respondent is retired, and no longer practicing law.

Based on disciplinary precedent, either an admonition or a reprimand would be supportable for respondent's communications with individuals he knew to be represented. Based on the record, however, we find that respondent's misconduct was de minimis and, accordingly, does not warrant discipline. Moreover, on balance, the mitigation, coupled with the fact that respondent has been retired for more than a year, supports a finding that the public interest is fully protected without the need to discipline respondent.

Members Joseph and Singer voted to deny the OAE's motion, finding that respondent committed no misconduct. Member Zmirich voted to impose an admonition for respondent's violation of RPC 4.2. Member Petrou was recused.

Disciplinary Review Board
Bruce W. Clark, Chair

By: **/s/ Ellen A. Brodsky**
Ellen A. Brodsky
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Ronald W. Horowitz
Docket No. DRB 19-468

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Decided: November 18, 2020

Disposition: No Discipline Imposed

Members	No Discipline Imposed	Admonition	Dismiss	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	2	1	0

/s/ Ellen A. Brodsky
Ellen A. Brodsky
Chief Counsel