

Supreme Court of New Jersey
Disciplinary Review Board
Docket Nos. DRB 20-104 and 20-146
District Docket Nos. XIV-2019-0126E
and XIV-2019-0414E

In the Matter of
Won Young Oh
An Attorney at Law

Decision

Decided: February 22, 2021

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

These matters were before us on certifications of the record filed by the Office of Attorney Ethics (OAE), pursuant to R. 1:20-4(f), and were consolidated for the imposition of discipline. The formal ethics complaint in DRB 20-104 charged respondent with having violated RPC 5.5(a)(1) (practicing law while ineligible) and RPC 8.1(b) (two instances – failure to cooperate with

disciplinary authorities).¹ The formal ethics complaint in DRB 20-146 charged respondent with having violated RPC 8.1(b).

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

Respondent earned admission to the New Jersey bar in 2011. At the relevant times, he maintained an office for the practice of law in Peachtree Corners, Georgia.

From August 28, 2017 to November 21, 2017, respondent was ineligible to practice law in New Jersey due to nonpayment of his annual attorney assessment to the New Jersey Lawyers' Fund for Client Protection (CPF).

Since October 30, 2017, respondent has been ineligible to practice law due to his failure to comply with New Jersey's mandatory continuing legal education (CLE) requirements for one or more of his compliance-reporting years.

From July 22, 2019 to August 28, 2020, respondent again was ineligible to practice law in New Jersey due to nonpayment of his annual attorney assessment to the CPF.

¹ Due to respondent's failure to file an answer to the formal ethics complaint, the OAE amended the complaint to include the RPC 8.1(b) charge.

Respondent has no disciplinary history.

Service of process was proper. On October 23, 2019, the OAE sent copies of the formal ethics complaint in DRB 20-104, by certified and regular mail, to respondent's home and office addresses of record. On October 29, 2019, "Powell" signed for the certified letter that was sent to respondent's office address. The certified letter mailed to respondent's home address was returned to the OAE marked "NOT DELIVERABLE AS ADDRESSED UNABLE TO FORWARD." The regular mailings were not returned.

On November 25, 2019, the OAE sent letters to respondent, by certified and regular mail, to his office and home addresses, informing him that, unless he filed a verified answer to the complaint within five days of the date of the letter, the allegations of the complaint would be deemed admitted, the record would be certified to us for the imposition of discipline, and the complaint would be deemed amended to charge a willful violation of RPC 8.1(b). On December 2, 2019, "Elizabeth Beck" signed for the certified letter that was sent to respondent's office. The certified letter mailed to respondent's home address was returned to the OAE marked "RETURN TO SENDER UNCLAIMED UNABLE TO FORWARD." The regular mailings were not returned.

On January 12, 2020, the OAE also published a "Disciplinary Notice" in The Albany Herald, a newspaper in the geographic area near respondent's

Georgia office address, informing respondent that a complaint had been filed against him. The notice stated that respondent's answer was required within twenty-one days after the date of publication and that his failure to answer pursuant to R. 1:20-4 would be deemed an admission of the allegations of the complaint, no further hearing would issue, and the matter would proceed directly to us for imposition of sanction.

As of April 8, 2020, respondent had not filed an answer to the complaint, and the time within which he was required to do so had expired. Accordingly, the OAE certified the matter to us as a default.

In respect of DRB 20-146, the OAE served the complaint by publication only. On May 5, 2020, the OAE published another "Disciplinary Notice" in The Albany Herald, informing respondent that a complaint had been filed against him and providing the same information contained in the Disciplinary Notice published in DRB 20-104.

As of June 14, 2020, respondent had not filed an answer to the complaint and the time within which he was required to do so had expired. Accordingly, the OAE certified this matter to us as a default.

We turn now to the allegations of the complaints.

The DOJ Matter - District Docket No. XIV-2019-0126E (DRB 20-104)

Respondent practices immigration law and is not admitted to the practice of law in any jurisdiction besides New Jersey. During the relevant timeframe, he maintained a law office in Georgia, and maintained no law office or attorney trust or business accounts in New Jersey.

As previously stated, since October 30, 2017, respondent has been ineligible to practice law for failure to comply with mandatory CLE requirements.

Subsequent to October 30, 2017, while ineligible to practice law in New Jersey, respondent filed Notice of Entry of Appearance as Attorney or Representative Before the Immigration Court forms (Notice of Appearance Forms) in eight cases before the U.S. Department of Justice Executive Office for Immigration Review (DOJ), Immigration Court (the Immigration Court), in which he represented that he was eligible to practice law in New Jersey. A party entitled to representation in the Immigration Court may be represented by “any person who is eligible to practice law in, and is a member in good standing of the bar of, the highest court of any State” (18 C.F.R. § 1.2; 8 C.F.R. § 292.1(a)(1); 8 C.F.R. § 1001.1(f)). Seven of these Notice of Appearance Forms were dated between January 1 and November 5, 2018. Due to respondent’s

ineligible status, he was not authorized to appear before the Immigration Court in those matters.

By letter dated February 21, 2019, the DOJ notified respondent that it had discovered that, despite respondent's ineligible status, he had improperly represented on Notice of Appearance Forms that he was eligible to practice law in New Jersey; the DOJ copied the OAE on that letter.

Between March 18 and May 9, 2019, the OAE sent multiple letters and an e-mail to respondent, requesting information regarding his unauthorized practice of law in the Immigration Court. Although respondent failed to reply to those letters, he answered a May 9, 2019 telephone call from the OAE, claimed that he had sent the OAE the requested information, via facsimile, and acknowledged receipt of the OAE's March 18, 2019 letter, which included a copy of the DOJ's referral and requested a written response.² The OAE had not received the facsimile from respondent and asked him to provide specific information, but he neither provided that information nor appeared at a scheduled demand interview.

Based on the above facts, the complaint in the DOJ matter charged respondent with having violated RPC 5.5(a)(1) by practicing law in the Immigration Court while administratively ineligible, and RPC 8.1(b) (two

² Three return receipts from certified letters sent to respondent's office address were returned to the OAE with signatures.

instances) by failing to cooperate with the OAE's investigation and failing to file an answer to the formal ethics complaint. The OAE did not allege that respondent knowingly practiced law while ineligible.

The Kim Matter – District Docket No. XIV-2019-0414E (DRB 20-146)

As previously stated, respondent previously has been ineligible to practice law, on multiple administrative grounds, and has no New Jersey business address on file with the Court.

On May 9, 2019, respondent informed Disciplinary Auditor Arthur Garibaldi that he had relocated his law practice to 4989 Peachtree Parkway, Suite 210, Peachtree Corners, Georgia 30092-2589.

On June 25, 2019, Hyojin Kim filed a grievance against respondent, alleging that she had been unable to reach respondent for more than four months; that he failed to attend her immigration interview; that he failed to provide proper legal advice to her, which led to her deportation; and that he failed to communicate with, or provide her file to, her new attorney, despite multiple requests.

On August 22, 2019, the OAE sent a copy of the grievance to respondent at his home address, by certified and regular mail, requesting his written response and a copy of Kim's file, on or before September 9, 2019. The certified mail was returned to the OAE marked "UNCLAIMED UNABLE TO

FORWARD.” The regular mail was not returned. Respondent did not reply to the August 22, 2019 letter.

On September 9, 2019, after learning that respondent had informed Garibaldi that respondent had changed the suite number of his office address, the OAE again wrote to respondent’s home address of record, by certified and regular mail, and reminded respondent that he was obligated to update his contact information on the attorney registration website. On October 18, 2019, the certified mail was returned to the OAE marked “UNABLE TO FORWARD.” The regular mail was not returned. Respondent did not reply to the September 9, 2019 letter.

On December 24, 2019, the OAE sent letters to respondent, by certified and regular mail, to his new office and home addresses, and enclosed copies of the prior August 22 and September 9, 2019 letters. The OAE requested respondent’s written reply on or before January 15, 2020. On January 2, 2020, the OAE received the undated, certified mail return receipt, bearing an illegible signature, for the certified letter sent to respondent’s office address. The regular mail to respondent’s office was not returned. On January 28, 2020, the certified copy of the December 24, 2019 mail sent to respondent’s home address was returned to the OAE marked “RETURN TO SENDER, NOT DELIVERABLE AS ADDRESSED, UNABLE TO FORWARD.”

Respondent failed to reply to the OAE's August 22, September 9, or December 24, 2019 requests for information.

Based on the above facts, the complaint in the Kim matter charged respondent with having violated RPC 8.1(b) by knowingly failing to reply to a lawful demand for information from "the Supreme Court of New Jersey, in violation of Rule 1:20(3)(g)(3)."

The facts alleged in the formal ethics complaints support the charges of unethical conduct. Respondent's failure to file answers to the complaints is deemed an admission that the allegations of the complaints are true and that they provide a sufficient basis for the imposition of discipline. R. 1:20-4(f)(1).

In respect of DRB 20-104, respondent violated RPC 5.5(a)(1) by practicing law in the Immigration Court while he was administratively ineligible to practice in New Jersey and was not admitted to the bar of any other state. Specifically, respondent filed Notice of Appearance Forms in eight cases before the Immigration Court, in which he incorrectly represented that he was eligible to practice law in New Jersey. This misconduct violated both the rules of the Immigration Court and the Rules governing the conduct of New Jersey attorneys. The OAE neither alleged nor produced evidence that respondent was aware of his ineligibility to practice.

Further, in DRB 20-104, respondent twice violated RPC 8.1(b) by failing to cooperate with disciplinary authorities and failing to file an answer to the formal ethics complaint. Specifically, he failed to provide information requested in five OAE letters, plus a telephone call in which he participated, and he then failed to appear at a scheduled demand interview.

Moreover, in DRB 20-146, respondent again violated RPC 8.1(b) by failing to cooperate with disciplinary authorities. Specifically, respondent failed to provide information requested in three OAE letters.

In sum, we find that respondent violated RPC 5.5(a)(1) in the DOJ matter, and RPC 8.1(b) (three instances) in both matters. The sole issue left for us to determine is the appropriate quantum of discipline for respondent's misconduct.

Ordinarily, when an attorney practices while ineligible, an admonition is imposed, if the attorney is unaware of the ineligibility. See, e.g., In the Matter of Jonathan A. Goodman, DRB 16-436 (March 22, 2017) (attorney practiced law during two periods of ineligibility; he was unaware of his ineligibility); In the Matter of James David Lloyd, DRB 14-087 (June 25, 2014) (attorney practiced law during an approximate thirteen-month period of ineligibility; among the mitigating factors considered was his lack of knowledge of the ineligibility); and In the Matter of Adam Kelly, DRB 13-250 (December 3, 2013) (during a two-year period of ineligibility for failure to pay the annual assessment to the CPF,

the attorney handled at least seven cases that the Public Defender's Office had assigned to him; in mitigation, the record contained no indication that the attorney was aware of his ineligibility, and he had no history of discipline since his 2000 admission to the New Jersey bar).

Likewise, admonitions typically are imposed for failure to cooperate with disciplinary authorities, if the attorney does not have an ethics history. See, e.g., In the Matter of Michael C. Dawson, DRB 15-242 (October 20, 2015) (attorney failed to reply to repeated requests for information from the district ethics committee investigator regarding his representation of a client in three criminal defense matters, a violation of RPC 8.1(b)); In re Gleason, 220 N.J. 350 (2015) (attorney did not file an answer to the formal ethics complaint and ignored the district ethics committee investigator's multiple attempts to obtain a copy of his client's file, a violation of RPC 8.1(b); the attorney also failed to inform his client that a planning board had dismissed his land use application, a violation of RPC 1.4(b)); and In the Matter of Raymond A. Oliver, DRB 12-232 (November 27, 2012) (attorney failed to submit a written reply to the grievance and a copy of the filed pleadings in the underlying case, despite repeated assurances that he would do so, a violation of RPC 8.1(b)).

Based on disciplinary precedent, a reprimand is warranted for respondent's combined misconduct. In crafting the appropriate sanction in this

case, however, we also must consider mitigating and aggravating factors. In mitigation, respondent has no prior discipline. In aggravation, respondent's egregious misconduct resulted in one client's deportation and negatively impacted a total of nine clients in immigration matters, which we have consistently viewed as an inherently sensitive field of law.

Thus, we determine that the sensitive nature of the client matters, coupled with the irreparable harm to the deported client, requires enhancement of the reprimand to a censure.

In further aggravation, however, we must consider the default status of both matters. "[A] respondent's default or failure to cooperate with the investigative authorities acts as an aggravating factor, which is sufficient to permit a penalty that would otherwise be appropriate to be further enhanced." In re Kivler, 193 N.J. 332, 342 (2008) (citations omitted). Given respondent's two defaults, the enhanced sanction of a three-month suspension is warranted.

On balance, we determine that a three-month suspension is the quantum of discipline necessary to protect the public and preserve confidence in the bar.

Chair Clark and Members Boyer and Hoberman voted to impose a censure. Members Joseph and Rivera 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: /s/ Timothy M. Ellis
Timothy M. Ellis
Acting Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matters of Won Young Oh
Docket Nos. DRB 20-104 and 20-146

Decided: February 22, 2021

Disposition: Three-Month Suspension

<i>Members</i>	Three-Month Suspension	Censure	Recused	Did Not Participate
Clark		X		
Gallipoli	X			
Boyer		X		
Hoberman		X		
Joseph				X
Petrou	X			
Rivera				X
Singer	X			
Zmirich	X			
Total:	4	3	0	2

/s/ Timothy M. Ellis

Timothy M. Ellis
Acting Chief Counsel