Supreme Court of New Jersey
Disciplinary Review Board
Docket No. DRB 21-202
District Docket No. XIV-2020-0523E

In the Matter of	:
Robert L. Rimberg	:
An Attorney at Law	:

Decision

Argued: November 18, 2021

Decided: February 25, 2022

Hillary K. Horton appeared on behalf of the Office of Attorney Ethics.

Respondent waived appearance for oral argument.

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

This matter was before us on a motion for final discipline filed by the Office of Attorney Ethics (the OAE), pursuant to R. 1:20-13(c)(2), following respondent's conviction, in the United States District Court for the Southern District of New York (the SDNY), for one count of operating an unlicensed

money-transmitting business, in violation of 18 U.S.C. § 1960(a). The OAE asserted that this offense constituted a violation of RPC 8.4(b) (committing a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects) and RPC 8.4(c) (engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation).

For the reasons set forth below, we determine to grant the motion for final discipline and to impose a three-year bar on respondent's ability to apply for future pro hac vice or plenary admission in New Jersey.

Respondent earned admission to the New York bar in 1987. In 2005, he was admitted to the New Jersey bar pro hac vice and, according to Court records, was in authorized pro hac vice status in 2005, 2006, 2010, and 2012. At the relevant times, he practiced law in New York, New York. Respondent has no disciplinary history in New Jersey.

As detailed below, respondent's criminal conduct commenced in 2010, while he was in authorized pro hac vice status in New Jersey. Therefore, the Court has jurisdiction to discipline respondent for that criminal conduct, pursuant to R. 1:20-1(a), which provides that "[e]very attorney . . . authorized to practice law in the State of New Jersey, including those attorneys specially authorized for a limited purpose or in connection with a particular proceeding . . . shall be subject to the disciplinary jurisdiction" of the Court.

We now turn to the facts of this matter.

On January 5, 2017, after signing a waiver of indictment and consenting to proceed by way of a superseding information, respondent entered a guilty plea, before the Honorable John G. Koeltl, U.S.D.J., SDNY, to the following charge:

> From at least in or about 2010 through in or about 2011, in the Southern District of New York and elsewhere, Robert Rimberg, the defendant, and others known and unknown, unlawfully, willfully, and knowingly did conduct, control, manage, supervise, direct, and own all and part of an unlicensed money-transmitting business affecting interstate and foreign commerce, in violation of Title 18, United States Code, Section 1960.[1]
>
> [OAEb1-2;Ex.A.][2]

On October 20, 2017, Judge Koeltl sentenced respondent to serve a one-year term of probation with standard conditions, to participate in 250 hours of community service, and to pay a $25,000 fine. Respondent failed to notify the OAE of his criminal charge and conviction, as R. 1:20-13(a)(1) requires.

[1] 18 U.S.C. § 1960 states, in relevant part: "(a) Whoever knowingly conducts, controls, manages, supervises, directs, or owns all or part of an unlicensed money transmitting business, shall be fined in accordance with this title or imprisoned not more than 5 years, or both."

[2] "OAEb" refers to the OAE's September 14, 2021 brief and appendix in support of its motion for final discipline.

On October 19, 2017, New York temporarily suspended respondent from the practice of law in that jurisdiction.[3] Subsequently, on June 3, 2020, the New York Supreme Court, Appellate Division, Second Judicial Department (the NY Appellate Division) suspended respondent from the practice of law in New York for three years, retroactive to October 19, 2017, the date of his temporary suspension. In the Matter of Robert L. Rimberg, 184 A.D.3d 171 (N.Y. App. Div., Second Dept. 2020).

The NY Appellate Division's opinion offered the following recitation of facts:

> The facts disclosed at a mitigation hearing showed the following: in the fall of 2010, the respondent was introduced to a business investor from South America who wished to invest $1 million cash for the production of a movie. The goal was to use the $1 million to leverage an additional $5 million from lenders to be used for the marketing of the movie. The respondent was assured that the money was "clean." The idea was for the $1 million cash to be delivered to the respondent's offices, and for the money to be deposited into a client's account, and then wired to different designated accounts. The respondent testified that he "didn't feel good about it," but agreed and went ahead with the arrangement. For the respondent's role in the transaction, he was paid a $25,000 fee. Several years later, the respondent learned that the money was "drug money." The respondent was initially charged with

[3] NYCRR § 1240.9 provides that an attorney may be suspended on "an interim basis during the pendency of an investigation or proceeding . . . upon a finding by the court that the respondent has engaged in conduct immediately threatening the public interest." Thus, New York's immediate suspension process is akin to New Jersey's temporary suspension process.

> money laundering; however, upon acknowledgment by the government that the respondent had no knowledge that the money was linked to narcotics, the respondent pleaded guilty to a lesser offense.
>
> [OAEb5;Ex.G.][4]

The NY Appellate Division's opinion noted the following mitigating factors: respondent testified credibly; he accepted responsibility for his actions; his conduct was aberrational; he was genuinely remorseful; he had an unblemished disciplinary history; and he was a well-respected legal practitioner.

Although the New York disciplinary authorities had sought a two-year suspension, the NY Appellate Division concluded that respondent's criminal conduct warranted a three-year suspension, finding:

> Notwithstanding the aforementioned mitigation, we find that the respondent should have known that the money was from an illegal source because, as the judge remarked at sentencing, "people usually don't walk into an office with a million dollars in cash" and ask that it be converted to another form. The respondent should have been on notice that this was not a legitimate transaction. The respondent acknowledged that something was not right and that he thought he was breaking some law somewhere, but decided to participate anyway. While no client was harmed, the respondent acted recklessly and was motivated by greed.
>
> [Ex.G.]

[4] Additional facts are set forth in confidential portions of the record.

In its brief in support of this motion for final discipline, the OAE argued that, although it was unable to locate any prior ethics decision in which an attorney was charged with operating an unlicensed money-transmitting business, terms of suspension had been imposed for the improper structuring of transactions and money laundering.

Specifically, the OAE cited the companion cases of In re Sommer, 217 N.J. 359 (2014), and In re Engelhart, 217 N.J. 357 (2014) as analogous, and In re Anise, 235 N.J. 360 (2018), as comparable, as discussed below.

Based on the New Jersey disciplinary precedent, the OAE recommended a one-year suspension "to reflect the seriousness of 'laundering' $1 million dollars of unknown and inherently suspicious origin through one's attorney trust account."

During oral argument before us, the OAE reiterated the arguments set forth in its brief.

Following a review of the record, we determine to grant the OAE's motion for final discipline. Final discipline proceedings in New Jersey are governed by R. 1:20-13(c). Under that Rule, a criminal conviction is conclusive evidence of guilt in a disciplinary proceeding. R. 1:20-13(c)(1); In re Magid, 139 N.J. 449, 451 (1995); In re Principato, 139 N.J. 456, 460 (1995). Hence, the sole issue is

the extent of discipline to be imposed. R. 1:20-13(c)(2); In re Magid, 139 N.J. at 451-52; and In re Principato, 139 N.J. at 460.

Pursuant to RPC 8.4(b), it is unethical conduct for an attorney to "commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer." Moreover, pursuant to RPC 8.4(c), it is unethical for an attorney to "engage in conduct involving dishonesty, fraud, deceit or misrepresentation." Respondent's conviction for running an illegal money-transmitting business, contrary to 18 U.S.C. § 1960, thus, establishes violations of RPC 8.4(b) and RPC 8.4(c).

The Court has noted that, although it does not conduct "an independent examination of the underlying facts to ascertain guilt," it will "consider them relevant to the nature and extent of discipline to be imposed." In re Magid, 139 N.J. at 452. In motions for final discipline, it is acceptable to "examine the totality of the circumstances," including the "details of the offense, the background of respondent, and the pre-sentence report," before "reaching a decision as to [the] sanction to be imposed." In re Spina, 121 N.J. 378, 389 (1990). The "appropriate decision" should provide "due consideration to the interests of the attorney involved and to the protection of the public." Ibid.

That an attorney's conduct did not involve the practice of law or arise from a client relationship will not excuse an ethics transgression or lessen the

degree of sanction. In re Musto, 152 N.J. 165, 173 (1997). Offenses that evidence ethics shortcomings, although not committed in the attorney's professional capacity, may, nevertheless, warrant discipline. In re Hasbrouck, 140 N.J. 162, 167 (1995). The obligation of an attorney to maintain the high standard of conduct required by a member of the bar applies even to activities that may not directly involve the practice of law or affect his or her clients. In re Schaffer, 140 N.J. 148, 156 (1995).

Here, respondent was convicted of one count of running an illegal money-transmitting business. He accepted $1 million in cash from a South American client and agreed to deposit that money into his attorney trust account for illegal distribution to sub-accounts. Although respondent admitted that he "didn't feel good about it" and suspected he might be breaking the law, he decided to participate in the criminal scheme in return for a $25,000 payment. Clearly, respondent's conduct and resulting criminal conviction constituted misconduct.

In sum, we find that respondent violated RPC 8.4(b) and RPC 8.4(c). The sole issue left for us to determine is the appropriate quantum of discipline for respondent's misconduct.

In determining the appropriate measure of discipline, we must consider the interests of the public, the bar, and the respondent. "The primary purpose of discipline is not to punish the attorney but to preserve the confidence of the

public in the bar." Ibid. (citations omitted). Fashioning the appropriate penalty involves a consideration of many factors, including the "nature and severity of the crime, whether the crime is related to the practice of law, and any mitigating factors such as respondent's reputation, his prior trustworthy conduct, and general good conduct." In re Lunetta, 118 N.J. 443, 445-46 (1989).

As noted, the OAE cited the companion cases of In re Sommer, 217 N.J. 359 (2014), and In re Engelhart, 217 N.J. 357 (2014) as analogous, and In re Anise, 235 N.J. 360 (2018), as comparable. Sommer and Engelhart admitted that they knowingly received $354,000 from a client, which they deposited in their firm's attorney trust account to evade the filing of a currency transaction report. Both had unblemished legal careers spanning over thirty years and presented other significant mitigation. For their crimes, each attorney was sentenced to two years of probation and fined. Our recommendations varied from a three-month retroactive suspension to disbarment, with the majority of us recommending a one-year suspension for each respondent, retroactive to the date of their temporary suspensions. In the Matters of Edward G. Engelhart and Goldie C. Sommer, DRB Nos. 13-271 and 13-272 (February 11, 2014). The Court agreed and imposed a one-year, retroactive suspension on each attorney. In re Sommer, 217 N.J. 359 (2014), and In re Engelhart, 217 N.J. 357 (2014).

The OAE further cited In re Anise, 235 N.J. 360 (2018), where we unanimously imposed, and the Court affirmed, a six-month prospective suspension, following the attorney's guilty plea and conviction for one count of causing a bank to fail to file a currency transaction report for purposes of evading reporting requirements, contrary to 31 U.S.C. § 5324(a)(1). In that case, the attorney purchased gold as an investment for his children's college fund, paid taxes on the proceeds, but illegally structured deposits. In deciding to suspend respondent for six months, we considered that, in mitigation, respondent had used his "own, legally obtained monies," as opposed to profits from illegal activities. In the Matter of Magdy F. Anise, DRB 17-350 (April 5, 2018).

Although not exactly on point, in another motion for final discipline, we considered the attorney's guilty plea to one count of conspiracy to commit money laundering, in violation of 18 U.S.C. § 1956, and one count of making a materially false, fictitious, or fraudulent statement or representation, in violation of 18 U.S.C. § 1001(a)(2). In the Matter of Yohan Choi, DRB 18-234 (December 28, 2018). In Choi, we granted the motion and imposed a two-year, retroactive suspension, finding that a recommendation to disbar was not justified given the significant mitigating factors; that Choi received no prison time for his convictions; that he cooperated with the government investigation; and that he

had no disciplinary record. Further, we considered that Choi's misconduct was limited in time and scope, and he was not a ringleader in the money-laundering scheme. The Court agreed. In re Choi, 239 N.J. 68 (2019).

Based on the New Jersey disciplinary precedent cited above, a term of suspension clearly is warranted. We determine that, in mitigation, respondent had no disciplinary history; accepted responsibility for his misconduct; and exhibited remorse.

However, in aggravation, respondent was motivated by his own pecuniary gain. As mentioned by the New York Appellate Division, respondent, an established attorney admitted to the bar in 1994, should have conducted due diligence to confirm that the money was not from an illegal source. Respondent's willful blindness to the criminal activity that resulted in his conviction and subsequent ethics matters cannot be ignored. We agree with the New York Appellate Division that respondent acted recklessly and was motivated by greed and, consequently, determine that a significant bar on his practice in New Jersey should be imposed.

Therefore, on balance, to protect the public and preserve confidence in the bar, we determine to grant the motion for final discipline and to impose a three-year bar on respondent's ability to apply for future pro hac vice or plenary admission in New Jersey.

Vice-Chair Singer and Member Rivera voted to impose a one-year bar on respondent's ability to apply for future pro hac vice or plenary admission in New Jersey.

Member Boyer was absent.

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
Hon. Maurice J. Gallipoli, A.J.S.C. (Ret.),
Chair

By: **/s/ Timothy M. Ellis**
Timothy M. Ellis
Acting Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Robert L. Rimberg
Docket No. DRB 21-202

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Disposition: Three-year bar on pro hac vice or plenary admission.

Members	Three-year bar on pro hac vice or plenary admission	One-year bar on pro hac vice or plenary admission	Absent
Gallipoli	X		
Singer		X	
Boyer			X
Campelo	X		
Hoberman	X		
Joseph	X		
Menaker	X		
Petrou	X		
Rivera		X	
Total:	6	2	1

/s/ Timothy M. Ellis
Timothy M. Ellis
Acting Chief Counsel