Supreme Court of New Jersey
Disciplinary Review Board
Docket No. DRB 22-001
District Docket No. XIV-2021-0128E

In the Matter of	:
Edan E. Pinkas	:
An Attorney at Law	:

Decision

Argued: March 17, 2022

Decided: June 23, 2022

Michael S. Fogler appeared on behalf of the Office of Attorney Ethics.

Kim D. Ringler appeared on behalf of respondent.

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

This matter was before us on a motion for reciprocal discipline filed by the Office of Attorney Ethics (the OAE), pursuant to R. 1:20-14(a), following an April 6, 2021 order of the Supreme Court of New York, Appellate Division, First Judicial Department, suspending respondent for eighteen months.

The OAE asserted that respondent was found guilty of having violated the equivalents of New Jersey RPC 5.5(a)(2) (assisting another in the unauthorized practice of law); RPC 8.3(a) (failing to report another lawyer's RPC violations that raise a substantial question as to that lawyer's honesty, trustworthiness, or fitness); RPC 8.4(c) (engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation); and RPC 8.4(d) (engaging in conduct prejudicial to the administration of justice).

For the reasons set forth below, we determine to grant the motion for reciprocal discipline and impose a six-month suspension.

Respondent earned admission to the New Jersey and New York bars in 2005. He has no prior discipline in New Jersey.

The facts underlying respondent's suspension in New York are set forth in a January 22, 2020 Referee Report of the Attorney Grievance Committee of the Supreme Court of New York, as well as the April 6, 2021 opinion of the New York Supreme Court, Appellate Division, First Judicial Department (the New York court). In the Matter of Bruce D. Friedberg and Edan E. Pinkas, 144 N.Y.S. 3d 183 (2021).

During the relevant time period, respondent and Bruce D. Friedberg were partners in the law firm Friedberg Pinkas PLLC (the Firm). The Firm was located in Manhattan, New York, and primarily represented parties seeking to

purchase, sell, or lease residential and commercial real estate. The Firm also represented financial institutions in connection with residential real estate mortgages.

Eric P. Gonchar was an attorney with extensive experience handling residential real estate closings. However, by order dated April 29, 2014, the New York court suspended Gonchar for nine months, effective May 29, 2014.[1] In re Gonchar, 118 A.D.3d 1 (2014). The New York court suspended Gonchar because, for eleven years, he had maintained a side practice of law without his firm's knowledge and in contravention of the terms of his employment agreement. Id. Gonchar also had failed to report the income he derived from his side practice on his state and federal income tax returns. Id.

Early in 2014, Gonchar informed respondent and Friedberg that he was facing a possible one-year suspension of his law license and asked if he could refer matters to the Firm. Gonchar also asked respondent and Friedberg if he could obtain employment with the Firm during his period of suspension.

Following Gonchar's inquiry, respondent contended that he had spent "quite a good deal of time" researching whether the Firm could employ Gonchar

[1] Gonchar's order conformed with N.Y. CLS Jud § 90, which requires that orders of suspension or disbarment in New York contain language that an attorney must "desist and refrain from the practice of law in any form, either as principal or as agent, clerk or employee of another," and that the disciplined attorney is prohibited from "giving to another of an opinion as to the law or its application, or of any advice in relation thereto."

and allow him, as a suspended attorney, to perform work. However, the Firm did not maintain a subscription to LexisNexis or Westlaw, so respondent conducted internet research regarding the permissibility of employing Gonchar. Respondent also inquired with Gonchar's ethics counsel[2] regarding what work Gonchar could perform during his term of suspension. Neither respondent nor Friedberg retained outside counsel to determine the proper scope of employment, if any, for a suspended attorney.

Respondent and Friedberg ultimately concluded that, in their view, Gonchar could perform work similar to other paralegals in the Firm but "could not go to court, could not file papers in court, could not represent clients on matters such as real estate transactions by doing contracts and closings, couldn't hold [him]self out as a lawyer and have a law office with business cards and just continuing to practice."

Thus, respondent and Friedberg worked with Gonchar's ethics counsel to create a job description they believed would allow for Gonchar's employment with the Firm. On May 30, 2014, Gonchar accepted the Firm's offer of employment at the Firm with the title of "Administrative, Clerical and File Assistant." Gonchar began his employment on June 2, 2014 and remained

[2] Gonchar's ethics counsel did not testify at the New York ethics proceeding.

employed with the Firm for more than two years, through December 31, 2016. Gonchar's responsibilities were indicated to be "ministerial," including:

> typing, data input, in office filing, mailing, proof reading, photocopying, scanning, faxing, assembly of redwelds and file folders, labeling, set up directories, close out files, assemble closing binders; engineer report review; department of building research; real estate tax research; word processing; input form documents all of the foregoing with attorney supervision.
>
> [NYEx.A.][3]

The offer of employment expressly prohibited Gonchar from "contact or communication of any kind whatsoever with clients, attorneys, title salespeople or employees, real estate brokers or bankers inside or outside of the office." The offer also prohibited Gonchar from participating in any transactions the Firm handled, conducting legal research, or handling Firm funds. The offer warned Gonchar that he was not permitted to practice law, hold himself out as an attorney, or conduct himself in a manner whereby another person would believe that he was an attorney. Although Gonchar was provided with a Firm e-mail address, he was instructed to use it only within the Firm to minimize his exposure to outside parties.

[3] "NYEx." refers to the exhibits appended to the October 12, 2018 Notice of Petition filed by the New York Attorney Grievance Committee, First Judicial Department.

When he began his employment at the Firm, Gonchar transferred twenty pending cases to the Firm. In the letters that he provided to his former clients, Gonchar stated he could no longer represent them and recommended that the clients utilize the Firm for their matters. Gonchar failed to inform his clients that he could no longer represent as a function of his disciplinary suspension. Respondent and Friedberg also did not inform Gonchar's former clients that Gonchar had been suspended from the practice of law.

When the Firm took over Gonchar's files, after respondent or Friedberg communicated with the clients, they replied to e-mails from clients which still included Gonchar's former e-mail address (the Gmail address) on the communications. Gonchar's Gmail address included a signature block for the Law Offices of Eric P. Gonchar. Respondent acknowledged he should have told Gonchar to cease use of the Gmail address, but instead acquiesced to Gonchar's use of the address.

Thus, early in his employment with the Firm, Gonchar received communications from former clients and third parties, via his Gmail address, seeking advice or representation. Gonchar replied to the e-mails and copied either respondent or Friedberg to inform the individual that he could not represent him or her and to recommend use of the Firm.

Additionally, after he began employment with the Firm, Gonchar continued to receive telephone calls or e-mails from individuals respondent described as "old friends" of Gonchar. Gonchar sent the e-mail exchanges to respondent, which reflected that Gonchar already had spoken with his friends regarding their concerns, and Gonchar occasionally added statements in the e-mails regarding tasks that needed to be accomplished.

Respondent also sent e-mails to Gonchar at the Gmail address, rather than to the Firm e-mail address. Respondent admitted that he did not object to Gonchar's use of his Gmail address, and in fact, used it himself, because he believed that Gonchar's ethics counsel endorsed continued use of Gonchar's e-mail address. As he did with crafting Gonchar's job description, respondent also chose not to seek independent legal counsel regarding Gonchar's use of his Gmail address.

When Gonchar's employment at the Firm began, the Firm created a separate directory on its computer system to store documents related to matters Gonchar transferred or referred to the Firm. That directory included the e-mails Gonchar sent. Respondent testified that the Firm's assignment of work to staff did not change with Gonchar's arrival, and that Gonchar's former clients were not treated differently from the Firm's own clients.

Respondent testified that Gonchar's duties at the Firm, in practice, deviated from the written job description the Firm had devised. For example, while the job description prohibited Gonchar from communication with outside parties, "on occasion," Gonchar spoke with real estate brokers. Respondent explained that he was aware of the conversations because some of them were e-mail communications on which Gonchar copied him. Respondent was also aware that Gonchar communicated with Firm clients and adversaries, notwithstanding the prohibition in his job description. However, respondent insisted that the work Gonchar performed was within the scope of employment of all other Firm paralegals, with the exception of his written prohibition on contact with outside parties.

When asked if he ever had sought Gonchar's advice on how to handle a legal issue faced by a client, respondent stated that he had, but later clarified that he would not have characterized his conduct as seeking advice from Gonchar. Rather, respondent and Gonchar discussed "logistical issues, facts about transactions, what was going on in terms of, was a closing scheduled, did a closing happen. Not legal advice." Respondent asserted that, because the Firm was an "open space," everyone discussed the Firm's matters "all the time." Indeed, respondent testified that Gonchar answered his legal questions and prepared documents for him to send to clients; nevertheless, respondent felt that,

because he reviewed the documents prior to sending them to clients, the legal advice was his own, and not Gonchar's. Respondent testified that he "may" have discussed legal issues with Gonchar, but that the ultimate decision regarding the case was his own, because respondent was the assigned attorney and firm partner.

When working on Firm matters, Gonchar revised and adapted the Firm's form documents; generated letters and e-mails for other Firm members to send to clients, adversaries, and third parties; reviewed and modified documents received from third parties; and prepared due diligence memoranda, closing statements, and other documents in connection with the Firm's real estate transactions. Gonchar also answered questions from Firm staff and prepared communications that Firm staff sent in response to questions from clients and third parties.

Although respondent and Friedberg generally adhered to the self-imposed restrictions on Gonchar's employment, Gonchar continued to have contact with his former clients and others using his Gmail address. Not only did respondent and Friedberg receive such e-mails from Gonchar, they replied to the e-mails. For example, in a January 26, 2015 e-mail exchange, an outside attorney sent an e-mail to Gonchar's Gmail address requesting that Gonchar review a contract of sale. Using his Gmail address, Gonchar forwarded the exchange to respondent

and Friedberg with the instruction to "look into this" and "let everyone know I am on vacation and that you are covering for me." Indeed, in reply to another e-mail regarding the contract of sale, Gonchar referred to respondent and Friedberg as his "colleagues."[4]

Further, two years after Gonchar had begun his employment at the firm, a new attorney started with the Firm. After that new attorney copied Gonchar's Gmail address, along with respondent and Friedberg, in e-mails to a third party on behalf of a client, an associate at the Firm informed respondent and Friedberg that "you guys might want to mention to [the new attorney] not to copy [Gonchar] on these emails."

Respondent testified that the Firm had intended to maintain Gonchar's employment for only nine months, which represented the duration of Gonchar's original suspension. However, respondent claimed that, during summer 2016, after Gonchar had been working at the firm for two years, the Firm decided to terminate Gonchar's employment, but determined that he could continue working at the Firm while interviewing for other jobs. Ultimately, during his tenure as a paralegal, Gonchar introduced the Firm to an additional 100 to 120

[4] In the same e-mail exchange, Gonchar's automatic reply on his Gmail address during his vacation, which included a signature block for the Law Offices of Eric P. Gonchar, read: "I will be on vacation from Saturday January 24, 2015 and will be returning to the office on Monday January 31, 2015. I will not have limited access to voice mail and email. If you need assistance on a legal matter, please contact my colleagues Bruce Friedberg, Esq. or Edan Pinkas, Esq."

clients. Those clients' cases generated six to seven percent of the Firm's overall revenue during that time.

Approximately one year after he began employment with the Firm, Gonchar applied for reinstatement as an attorney in New York.

On November 10, 2016, after Gonchar had applied for reinstatement to the New York bar, counsel for the Committee wrote a letter to Friedberg seeking information regarding Gonchar's employment at the Firm. The Committee also requested copies of the twenty-two files that Gonchar had transferred to the Firm at the commencement of his employment, inclusive of any communications, including e-mails, text messages, and internal memoranda. Thereafter, respondent and Friedberg directed a Firm employee, whom they considered the Firm's "IT specialist," to retrieve the documents from the Firm's database. Respondent did not, at that point, retain independent counsel to assist him in answering the Committee's questions.

On December 16, 2016, after the Firm's IT specialist retrieved the documents, Friedberg responded to the Committee's questions by sending a box containing what he claimed were the requested files.

Later, on March 6, 2017, the Committee asked the Firm whether Gonchar used an e-mail address provided by the Firm. Friedberg replied in the affirmative two days later, via an e-mail with a copy to respondent, confirming that Gonchar

not only had a Firm e-mail address, but that, over the course of his employment, he had sent over 10,000 e-mails using the address. Friedberg added that all the e-mails Gonchar sent were internal e-mails within the Firm and that the terms of Gonchar's employment prohibited him from communication with parties outside the Firm.

Consequently, the Committee requested that respondent and Friedberg produce the e-mail messages from Gonchar's Firm e-mail address that were sent during the first three months of his employment. Again, respondent and Friedberg instructed the IT specialist to download all such e-mails that were on Firm computers and in its cloud storage with Microsoft. Respondent and Friedberg did not search for e-mails Gonchar sent or received using his Gmail address, because the Committee had not explicitly requested those.

In response to the Committee's ongoing requests for production of documents through the months of March through May 2017, respondent and Friedberg retained Christopher McDonough, Esq., who was Gonchar's counsel in connection with his reinstatement application, to assist them. Although McDonough communicated with the Committee regarding its requests and Gonchar's work at the Firm, the Committee was dissatisfied with the Firm's production of documents and responses to its questions.

Therefore, on July 7, 2017, the Committee's Chief Attorney sent respondent and Friedberg separate letters, notifying each that the Committee's investigation of Gonchar's work with the Firm "has raised issues as to whether [they] may have aided a suspended lawyer in the unauthorized practice of law." The letter requested copies of any Firm communications involving Gonchar as the sender or recipient.

Consequently, respondent retained new, independent counsel and utilized a document production software program to comply with the Committee's request. On August 31, 2017, the Firm provided the Committee with over 56,000 pages of documents the program had retrieved from the Firm's computer system.

Respondent asserted that his initial, inadequate reply to the Committee was due to his lack of familiarity with replying to litigation requests, because he was not a litigator. Respondent maintained that he did not intend to evade the Committee's requests and that, after the Committee opened its investigation, he fully complied with the requested document production.

The Committee ultimately was dissatisfied with the Firm's responses and, consequently, in July 2018, opened an investigation concerning respondent and Friedberg.

During its investigation, the Committee learned that, to handle all of the real estate transactions for which it was retained, the Firm had developed a

database of over seven hundred forms and templates for nearly every aspect of the real estate transactions it handled. All employees of the Firm were granted access to the database, which included contracts; riders; occupancy agreements; due diligence memoranda and questionnaires; draft e-mails; form letters; and closing instructions and statements.

On October 5, 2018, the New York court disbarred Gonchar for violating the terms of his suspension by continuing to hold himself out as an attorney and engaging in the unauthorized practice of law while employed by respondent's Firm. In re Gonchar, 166 A.D.3d 91 (2018). The New York court found that Gonchar "gave substantive legal advice on real estate matters" to Firm attorneys and non-attorney employees in "flagrant violation of [the court's] suspension order."

Thereafter, on October 12, 2018, the Committee filed a Notice of Petition against respondent, alleging that his employment of Gonchar and related conduct violated the equivalents of New Jersey RPC 5.5(a)(2); RPC 8.3(a); RPC 8.4(c); and RPC 8.4(d). The Committee alleged that respondent authorized Gonchar, whom he knew to be a suspended attorney, to apply his legal skills and knowledge on behalf of the Firm's clients; falsely responded to the Committee's inquiry regarding Gonchar's e-mails; falsely testified regarding Gonchar's

conduct as a Firm employee; and failed to report Gonchar's improper conduct to disciplinary authorities.

Following a seven-day hearing, the New York Referee found that the Firm's creation of a separate directory on its computer system to store Gonchar's former clients could not be construed as aiding and abetting Gonchar's unauthorized practice of law. However, the Referee found that the evidence was "overwhelming" that Gonchar's work on Firm matters was similar to the work of other Firm staff members. However, the Referee found that some of Gonchar's e-mails to clients using his Gmail address contained "brief suggestions regarding what needed to be done in the client's matter."

Respondent not only was copied on those e-mails but directly replied to Gonchar's Gmail address. The Referee's finding in that respect acknowledged that a lay person would believe Gonchar was still practicing law, due to his use of his Gmail address and signature indicating that he was an attorney practicing at the Law Offices of Eric P. Gonchar, but found that, after the matter had been transferred to the Firm, the clients would believe the Firm, and not Gonchar, was representing them. Nevertheless, the Referee found respondent's continued use of Gonchar's Gmail address implied or suggested that Gonchar was still permitted to practice law. The Referee found that the limitations respondent and Friedberg placed on Gonchar's work at the Firm demonstrated that they knew

they needed to do more to avoid giving the impression that Gonchar was permitted to practice law, and that they had fallen well below their obligation.

Ultimately, the Referee found that, contrary to respondent's testimony that Gonchar did not provide legal advice, "there cannot be any serious debate that [Gonchar] did answer questions involving legal issues relating to legal transactions." Although Gonchar worked as a paralegal, he analyzed proposed transactions, prepared documents, and reviewed documents prepared by others, all of which were informed by his knowledge of real estate law. Thus, the Referee found that Gonchar's preparation and tailoring of the documents used in specific real estate transactions unquestionably met the definition of "giving legal advice."

Notwithstanding his finding, the Referee determined that the Firm was not unique in its reliance upon paralegals to do legal work. The Referee noted that it is common practice in New York for paralegals to "research facts, prepare documents, negotiate their contents with lawyers (or paralegals) representing counter-parties, consult with clients, advise clients about these documents, answer questions from lawyers within the firm, schedule and appear at closings and do whatever else these transactions may require to be completed." Indeed, respondent testified that, throughout his career, he had dealt with "thousands" of paralegals representing clients in real estate transactions, often without any

evidence of an attorney's involvement. The Referee speculated that, if the work done by paralegals in New York real estate transactions was to be considered practicing law, then most attorneys practicing real estate law in New York would be guilty of aiding and abetting the unauthorized practice of law.

Ultimately, the Referee found that Gonchar had no contact with clients or third parties concerning Firm cases, and that the materials he prepared were based on existing forms within the Firm's database. The Referee noted that any advice that Gonchar provided did not leave the Firm, because the attorneys within the Firm first reviewed the advice before disseminating it to clients.

The Referee reasoned that the danger of the unauthorized practice of law was the deception by the individual claiming to be a licensed attorney. In that vein, the Referee found that, although Gonchar impermissibly used his Gmail address on Firm matters, he did not hold himself out as an attorney and, thus, the Referee did not find that Gonchar's activities as a Firm paralegal obviously included the unauthorized practice of law by a suspended attorney. Therefore, the Referee concluded that "Gonchar's work at the Firm under the restrictions imposed by respondents did not aid and abet the unauthorized practice of law." The Referee reasoned that assisting and training attorneys, as Gonchar did, was not the practice of law.

Nonetheless, the Referee found that respondent knew Gonchar's continued use of his Gmail address was wrong. Yet, respondent made no effort to stop Gonchar's continued use of his Gmail address after he accepted the Firm's offer of employment. Therefore, the Referee found that respondent's failure to take action to address Gonchar's use of his former e-mail address violated the equivalent of New Jersey RPC 5.5(a)(2).

Furthermore, the Referee found that respondent's initial responses to the Committee's requests for information "cannot be applauded or ignored, but they appear not to have had any material, deleterious effect on the Committee's work other than the fact of delay." Additionally, the Referee found that respondent's statements under oath that – Gonchar did not provide legal advice – were not dishonest, but, rather, the questions called for nuanced answers regarding whether paralegals, in general, give legal advice, and respondent's answers did not rise to the level of conduct prohibited by RPC 8.4(c) and RPC 8.4(d).

With respect to respondent's reply to the Committee's inquires following Gonchar's application for reinstatement to the practice of law, the Referee did not find that respondent violated RPC 8.4(c) or RPC 8.4(d). The Referee found that respondent had not concealed the work Gonchar performed at the Firm and ultimately corrected his deficient submissions to the Committee.

Nevertheless, the Referee found that Gonchar's job description, as prepared by respondent and Friedberg, was problematic. Although the job description sets forth duties that were intended to be "a glorified file clerk," the Referee found "that is not what Gonchar was hired to do, and it is not what he did do." Instead, respondent and Friedberg hired Gonchar as a paralegal "because he could do the work that paralegals do in today's law firms in analyzing and documenting the type of transactions handled by the Firm." The Referee characterized the restrictions placed upon Gonchar as being imposed to avoid the appearance that Gonchar would be "seen as practicing law or holding himself out as a lawyer to clients of the public."

Thus, the Referee found that Gonchar's employment with the Firm did not constitute the unauthorized practice of law, and therefore, respondent did not aid Gonchar in the unauthorized practice of law, except with respect to respondent's "acquiescence and participation in Gonchar's continued use" of his former e-mail address and signature block. In so finding, the Referee determined that respondent violated the equivalent of New Jersey RPC 5.5(a)(2).

In mitigation, the Referee found that respondent had an unblemished record; demonstrated good character; and engaged in community service. Moreover, respondent expressed regret and remorse for his misconduct and failure to properly supervise Gonchar. The Referee acknowledged that five

character witnesses testified on behalf of respondent, and that ten others submitted character letters commenting on respondent's integrity.

Therefore, the Referee recommended that respondent be censured for his misconduct.

Following its review of the Referee's Report and Recommendation, the New York court agreed with the Referee's findings that respondent committed misconduct with respect to Gonchar's continued use of his Gmail address. However, the court determined that the Referee erred in concluding that respondent had not aided Gonchar in the unauthorized practice of law.

The New York court noted that "activities like preparing memoranda and documents to be filed in court – even if subscribed to by an admitted attorney – or conducting interviews with clients are forbidden to a suspended or disbarred attorney." It is for this reason that orders issued in New York suspending or disbarring attorneys are statutorily required to insert language that an attorney must "desist and refrain from the practice of law in any form, either as principal or as agent, clerk or employee of another," and that the disciplined attorney is prohibited from "giving to another of an opinion as to the law or its application, or of any advice in relation thereto." N.Y. CLS Jud § 90 (2).[5]

[5] Similarly, New Jersey's R. 1:20-20(b) states that a suspended attorney may not "practice law in any form as principal, agent, servant, clerk or employee of another . . . shall not

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The New York court found that Gonchar operated "as a 'paralegal' dispensing advice through the intermediaries of attorneys who interacted directly with clients," possessed superior legal knowledge, and "functioned as a senior attorney . . . by the exercise of his experience and acumen . . . not his services as a paralegal, [and] made major contributions to the resolution of many of the firm's cases."

The New York court rejected as not credible respondent's belief that Gonchar could work as a paralegal so long as he was prohibited from contact with anyone outside the Firm. In so finding, the New York court highlighted the misleading job description respondent and Friedberg had prepared and their failure to seek independent legal counsel before hiring Gonchar.

Upon review, the New York court sustained the Referee's findings that respondent did not mislead the Committee and did not provide false deposition testimony during the Committee's investigation into respondent's conduct.

However, the New York court, based upon its finding that respondent aided Gonchar in the unauthorized practice of law, rejected the recommendation that respondent be censured. Instead, the New York court imposed an eighteen-

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occupy, share or use office space in which an attorney practices law . . . [and] shall not furnish legal services, give an opinion concerning the law or its application or any advice with relation thereto, or suggest in any way to the public an entitlement to practice law . . . ."

month suspension. The New York court ultimately found that it was "difficult to see how [respondent and Friedberg], both experienced attorneys, failed to appreciate the import of [Gonchar's suspension] order or credibly believed that the work Gonchar performed over a 2 ½ year period did not rise to the level of unauthorized practice of law."

In its brief to us, the OAE asserted that respondent's misconduct in New York warranted reciprocal discipline in the form of a six-month suspension in New Jersey. The OAE correctly argued that respondent's most egregious misconduct was aiding a suspended attorney in the unauthorized practice of law. The OAE noted that, although there are numerous cases in which we have imposed discipline on attorneys who assist nonlawyers in the unauthorized practice of law, there are few cases in which attorneys have been disciplined in New Jersey for assisting suspended or disbarred attorneys in the unauthorized practice of law.

The OAE cited In re Tran, 246 N.J. 155 (2021), in support of its recommendation for a six-month suspension. In Tran, the attorney learned that she was the sole remaining attorney in good standing at the firm in which she was employed. Both partners of the firm had been suspended. After learning of the partners' suspensions, the attorney created her own law firm and took over the office space and staff of her former firm. Thereafter, for approximately one

month, she assisted one of the suspended attorneys in the unauthorized practice of law. Tran argued that she did so because there were real estate closings pending for clients and that she did not want the clients to suffer.

Although the OAE relied on Tran, it distinguished that attorney's misconduct by asserting that, here, respondent does not benefit from the mitigating facts present in Tran. Specifically, the OAE asserted that respondent hired Gonchar knowing he was suspended from the practice of law; respondent utilized Gonchar's legal acumen and contacts to benefit the Firm; and respondent allowed Gonchar to engage in the unauthorized practice of law for an extended period. Therefore, the OAE contended that a six-month suspension was the appropriate quantum of discipline for respondent's misconduct.

In oral argument before us, the OAE asserted that the only issue in dispute in this matter was whether respondent's suspension should be retroactive or prospective. Citing New Jersey disciplinary precedent, the OAE maintained that a retroactive suspension would not be appropriate in this matter because respondent was not temporarily suspended and his decision to voluntarily abstain from the practice of law in our jurisdiction does not weigh in favor of a retroactive suspension.[6] Furthermore, the OAE noted the absence of any

[6] Citing In re Shtindler, 227 N.J. 457 (2017) (on a motion for reciprocal discipline, the Court imposed a one-year suspension on an attorney, retroactive to the date on which the attorney

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considerable delay between the imposition of discipline in the foreign jurisdiction and the filing of its motion, which spanned only nine months.

In his brief to us, respondent agreed with the OAE's recommendation for a six-month suspension but requested that the suspension be imposed retroactive to May 7, 2021, the effective date of his suspension in New York.

Respondent contended that the imposition of a retroactive suspension would still protect the public because he has an unblemished, sixteen-year legal career; his character evidence demonstrates he is of good character; and his misconduct was out of character and unlikely to recur. Additionally, respondent argued that the "relatively harsh sanction" he received in New York already has negatively impacted him, his reputation, and his family. To that end, respondent asserted that a retroactive suspension was appropriate because he has never practiced law in New Jersey and has not practiced law in New York following

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became administratively ineligible to practice law in New Jersey, for a New York suspension that took effect three years prior to the OAE filing its motion); In re Berger, 185 N.J. 269 (2005) (on a motion for reciprocal discipline, filed in 2005, for conduct that occurred in 1996, the Court imposed a retroactive suspension, finding that, because the attorney already had been suspended for four years in New York, a prospective suspension in New Jersey would be "unnecessarily harsh"); In re Asbell, 135 N.J. 446 (1994) (although we had recommended the imposition of a two-year, suspended suspension, the Court declined to impose a suspended suspension, finding that a voluntary suspension "cannot be considered as a form of discipline"); In re Farr, 115 N.J. 231 (1989) (the Court imposed a prospective six-month suspension on an attorney, holding that "if in the future a respondent seeks to urge suspension from practice as a relevant mitigating factor, the suspension must be imposed by order of the Court and not through the voluntary action of the respondent. Otherwise, the Court will be unable to assess and supervise the suspension").

his suspension. Consequently, respondent asserted that his request for a retroactive suspension was supported by Berger and Shtindler.

In mitigation, respondent appended twelve letters, which were submitted during the New York ethics proceeding, but not included as exhibits to the OAE's motion, attesting to his good character. The letters describe respondent's reputation for honesty both within and outside the practice of law. Additionally, the authors of the letters asserted that they had read the New York petition for discipline, and that the misconduct described therein was inconsistent with the person they knew.

Finally, respondent submitted documentation, which was submitted during the New York ethics proceeding, regarding his community service activities. The documents reflect that, beginning on January 6, 2019, he began volunteering his time to food pantry distribution, and has donated clothes, furniture, and other items to charity.

At oral argument before us, through counsel, respondent explained that he agreed with the OAE's recommendation for a six-month suspension but stressed that his misconduct was inconsistent with his general good character. With respect to his request that we impose a retroactive suspension, respondent argued that it had been almost one year since he notified the OAE that New York ethics authorities were investigating him, and the passage of time between his

report of his New York discipline and the filing of the OAE's motion was not his fault.[7]

Respondent argued that a retroactive suspension was also appropriate because he currently is suspended in New York and, even though he had never practiced law in New Jersey, he wished to resume the practice of law in this state.

Respondent also addressed us in a statement, asserting that he was deeply remorseful for his actions. Respondent contended that he did not intend to break the rules, but knows that he did, and was apologetic for his actions.

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).

[7] The record reflects that, on April 19, 2021, respondent notified the OAE that the New York court had issued its April 6, 2021 order imposing an eighteen month suspension, effective May 7, 2021.

In New York, the standard of proof in attorney disciplinary matters is the fair preponderance of the evidence. In re Capoccia, 453 N.E.2d 497, 498 (N.Y. 1983). Although New Jersey R. 1:20-6(c)(2)(B) requires the application of the more stringent clear and convincing standard of evidence in New Jersey disciplinary proceedings, in his brief to us, respondent adopted the findings of fact made by the New York court.

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

> The Board shall recommend the imposition of the identical action or discipline unless the respondent demonstrates, or the Board finds on the face of the record on which the discipline in another jurisdiction was predicated that it clearly appears that:
>
> (A) the disciplinary or disability order of the foreign jurisdiction was not entered;
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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 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.

In our view, subsection (E) applies in this matter because, pursuant to New Jersey precedent, respondent's unethical conduct warrants substantially different discipline. Accordingly, we determine to grant the OAE's motion for reciprocal discipline and find that respondent aided and abetted Gonchar in the unauthorized practice of law and failed to report Gonchar's misconduct to disciplinary authorities, in violation of RPC 5.5(a)(2) and RPC 8.3(a). We adopt the New York court's finding that respondent did not attempt to mislead New York disciplinary authorities and, thus, did not violate RPC 8.4(c) or (d).

Specifically, respondent violated RPC 5.5(a)(2) by assisting Gonchar, a suspended attorney, in the practice of law by improperly employing him as a paralegal; seeking and using Gonchar's legal advice concerning Firm matters; permitting Gonchar to tailor legal documents in Firm matters; allowing Gonchar to communicate with outside parties regarding Firm cases; and permitting Gonchar's ongoing use of his Gmail address, which falsely represented that he was an attorney with his own firm. Moreover, in that same vein, respondent violated RPC 8.3(a) by failing to report Gonchar's unauthorized practice of law to disciplinary authorities.

The Court has made clear that it will evaluate our decision to grant a motion for reciprocal discipline under R. 1:20-16(c) to determine whether clear and convincing evidence supports each ethics violation upon which we

recommend discipline. In re Barrett, 238 N.J. 517, 521-522 (2019).[8] In so doing, the Court in Barrett characterized R. 1:20-14 reciprocal discipline as "the process by which New Jersey applies its ethics rules to an attorney admitted in New Jersey, following the imposition of discipline in an ethics proceeding conducted by a sister jurisdiction." Id. at 522 (quoting In re Sigman, 220 N.J. 141, 153 (2014)). Our review, like that of the Court, therefore "involves 'a limited inquiry, substantially derived from and reliant on the foreign jurisdiction's disciplinary proceedings.'" Ibid.

Thus, on this record, it is unclear from the OAE's motion and supporting brief, which serve as the charging documents in this matter, the factual basis for its allegation that, notwithstanding the findings of the New York court, respondent violated RPC 8.4(c) and RPC 8.4(d). Consequently, we adopt the rationale of the New York court and determine to dismiss the RPC 8.4(c) and RPC 8.4(d) charges against respondent.

Although it does not appear that respondent had malicious motives when he determined to employ Gonchar, there is no question that he assisted Gonchar in the unauthorized practice of law. Knowing Gonchar faced suspension, respondent offered him employment at the Firm and assisted in the preparation

[8] In this matter, New York applied the less stringent, fair preponderance of the evidence standard in its ethics proceedings.

of a job description, in which his Firm would grant Gonchar the title of "Administrative, Clerical and File Assistant." Respondent claimed to have spent a significant amount of time researching whether Gonchar could work at the Firm and, if so, what job functions Gonchar could perform. Although respondent consulted with Gonchar's ethics counsel – rather than independent and neutral counsel – and researched the issue on the internet (since the Firm did not have a LexisNexis or Westlaw account), respondent wholly failed to appreciate the language of the New York court rules (which are substantially the same as the relevant New Jersey Rule), as mirrored in Gonchar's suspension order, which read that Gonchar was required to "desist and refrain from the practice of law in any form, either as principal or as agent, clerk or employee of another," and that he was prohibited from "giving to another of an opinion as to the law or its application, or of any advice in relation thereto." Additionally, although respondent appears to have offered Gonchar employment at the Firm for benevolent reasons, respondent accepted the fruits of Gonchar's unauthorized practice of law and took no steps during Gonchar's employment to ensure Gonchar conformed his duties to the job description so carefully constructed prior to his employment.

Indeed, although respondent titled Gonchar's job description "Administrative, Clerical and File Assistant," Gonchar unquestionably

functioned essentially as a "paralegal-plus" within the Firm. Respondent's own testimony throughout the ethics proceeding indicated that Gonchar's job duties were the same as any other paralegal in the Firm, thus, demonstrating that the title contained within the job description was a facade. Respondent was aware that not only did Gonchar perform the duties of a paralegal, but he also gave instructions regarding case direction to respondent; respondent's partner; lawyer and nonlawyer staff of the Firm; and third parties. We are particularly troubled that respondent's tolerance of Gonchar's unauthorized practice of law generated seven percent of the Firm's revenue during the time he was employed.

Furthermore, respondent was copied on multiple e-mail communications Gonchar sent using his Gmail address, containing a signature block for the Law Offices of Eric P. Gonchar, in blatant violation of his suspension order. Not only did respondent fail to address the misconduct with Gonchar, he also failed to clarify to individuals communicating with the Firm that Gonchar was not permitted to practice law, due to his suspension. Respondent also failed to report Gonchar's unauthorized practice of law to disciplinary authorities but, instead, assented to the conduct by repeatedly replying to those e-mail messages in the normal course of Firm operations.

More alarmingly, respondent sought and accepted legal advice from Gonchar, an attorney he knew had been suspended from the practice of law.

Respondent's position that he did not believe that Gonchar was engaging in the practice of law – because all decisions and documents flowed through respondent – does not pass muster and violated both the express terms and spirit of the New York and New Jersey rules governing suspended attorneys.

Like New York, New Jersey does not permit suspended or disbarred attorneys to work as paralegals. R. 1:20-20(b)(1) ("An attorney who is suspended, transferred to disability-inactive status, disbarred, or disbarred by consent or equivalent sanction . . . shall not practice law in any form either as principal, agent, servant, clerk or employee of another"); In re Hancock, DRB 14-022 (August 20, 2014) (imposing reciprocal discipline of a six-month suspension upon an attorney who allowed a disbarred attorney to "assist him in his law office, as a paralegal" and to advertise as such) at 3, 5, so ordered, 221 N.J. 259 (2015).

Respondent was demonstrably aware that Gonchar was not permitted to practice law by offering a legal opinion; he included that restriction in Gonchar's job description. Indeed, respondent's own testimony reflected that, so long as Gonchar's advice remained within the Firm, he believed Gonchar was not engaged in the practice of law.[9] Yet, respondent also knew Gonchar's advice

[9] Put another way, the plain language of New Jersey's R. 1:20-20(b)(1) defeats the "mere paralegal" defense that New York correctly rejected here under equivalent N.Y. CLS Jud §

(footnote cont'd on next page)

was offered to external parties. Therefore, even though Gonchar did not sign any legal documents as an attorney on behalf of the Firm, he unquestionably engaged in the practice of law by offering his legal opinion on Firm matters, as well as by modifying Firm forms in furtherance of clients' real estate transactions. Indeed, Gonchar was permitted the opportunity to engage in the unauthorized practice of law because respondent, knowing that Gonchar would be suspended from the practice of law, crafted a job description designed to permit Gonchar to continue practicing real estate law until his term of suspension had concluded. The result was that, for two-and-a-half years, Gonchar engaged in the unauthorized practice of law with respondent's full knowledge and assent.

In sum, we find that respondent violated the equivalent of New Jersey RPC 5.5(a)(2) and RPC 8.3(a). We determine to dismiss the RPC 8.4(c) and RPC 8.4(d) charges. The only remaining issue for our determination is the appropriate quantum of discipline to impose for respondent's misconduct.

90(2). That is, by including "agent, servant, clerk, or employee" in the plain language of the Rule, the Court has expressed its disapproval of using suspended and disbarred attorneys as law firm staff. Nor could it be otherwise, given the Court's existing advisory jurisprudence observing that paralegal work "constitutes the practice of law" which is only rendered acceptable by the close and effective supervision of attorneys in good standing. In re Opinion No. 24 of the Committee on the Unauthorized Practice of Law, 12 8 N. J. 114, 123 (1992). Similar behavior by a suspended or disbarred attorney cannot be condoned because it occurs in derogation of the final disciplinary order, and it therefore "condones unethical behavior, may put the public at risk[,] creates negative perceptions of the legal profession" and may also "minimize the severity of the act that caused their disbarment and/or suspension." Valerie A. Dolan, "Should Disbarred, Suspended Attorneys Be Eligible for Paralegal Work?" (October 27, 2008).

Although there are numerous cases in which attorneys have assisted nonlawyers in the unauthorized practice of law, there are relatively few in which lawyers have assisted suspended or disbarred lawyers. See, e.g., In re Tran, 246 N.J. 155 (2021) (motion for reciprocal discipline; the attorney was suspended for three months after she assisted her former employer, a suspended attorney, in the unauthorized practice of law, for approximately one month; the attorney described that time as chaotic and stressful as she had recently learned of the partner's suspension; was the only attorney in good standing remaining at the firm; and wanted to ensure firm clients did not suffer); In re Martin, 226 N.J. 588 (2016) (motion for reciprocal discipline; six-month suspension for assisting a suspended attorney in the unauthorized practice of law while purporting to be the attorney of record; the attorney also knowingly disobeyed a court order, failed to supervise a nonlawyer employee, and shared fees with the suspended attorney); In re Kronegold, 197 N.J. 22 (2008); In re Hancock, 221 N.J. 259 (2015) (companion cases) (motions for reciprocal discipline; six-month suspensions for attorneys who assisted a disbarred attorney in the unauthorized practice of law; the clients "hired" the disbarred attorney, who paid Hancock and Kronegold to provide legal services; in one matter, Hancock appeared for oral argument, at the disbarred attorney's request, and made a misrepresentation to the court, claiming he was representing the client pro bono; the disbarred

attorney then prepared and filed a brief with the appellate court, using Kronegold's name and purported signature; in another matter, Hancock failed to supervise the disbarred attorney, allowing him, as a "paralegal" in his firm, to conduct bankruptcy proceedings under Hancock's name; Hancock also made misrepresentations to the bankruptcy court regarding the disbarred attorney's role in the proceedings; in mitigation, we considered the passage of time (ten to twelve years) since the misconduct and Hancock's unblemished disciplinary record since his 1979 admission; Kronegold signed a notice of appeal for the client, at the disbarred attorney's request; the disbarred attorney then prepared and filed a brief with the appellate court, using Kronegold's name and purported signature; Kronegold also failed to set forth in writing the rate or basis of his fee); In re Cermack, 174 N.J. 560 (2003) (attorney consented to a six-month suspension after he entered into an agreement to permit a suspended lawyer to continue to represent his own clients while the attorney was the named attorney of record and made court appearances; the attorney also displayed a lack of diligence, failed to keep clients reasonably informed about the status of their matters, failed to explain matters to the extent reasonably necessary to permit clients to make informed decisions, failed to comply with recordkeeping requirements, failed to protect his clients' interests on termination of the representation, knowingly assisted another to violate the Rules of Professional

Conduct, and engaged in conduct prejudicial to the administration of justice; no prior discipline).

The OAE relied on Tran in support of its request for a six-month suspension and argued that, on balance, respondent's misconduct was more egregious. Tran received a three-month suspension after she assisted a suspended attorney in the unauthorized practice of law. The suspended attorney was the partner of the firm where she was employed and Tran learned of the suspension after it occurred; immediately took steps to establish her own practice; and in the short time between the partner's suspension and the establishment of her own practice, assisted the partner in the unauthorized practice of law in a misguided effort to protect the interests of the firm's clients in pending real estate transactions.

Here, respondent's misconduct is undoubtedly more severe than Tran's and is more analogous to the attorney in Cermack, who received a six-month suspension. Specifically, both respondent and Cermack benefitted from a suspended attorney's practice of law.

Where the conduct of Cermack and respondent diverge is in the sheer volume of clients and length of time they assisted suspended attorneys in the unauthorized practice of law. Cermack took on approximately fifteen of the

suspended attorney's cases. The suspended attorney informed his clients that he had been suspended, and that Cermack would be the attorney of record.

By contrast, here, neither Gonchar nor respondent informed Gonchar's former clients that he had been suspended. That omission led the clients to believe Gonchar was still permitted to practice law and offer legal opinions. Additionally, although Gonchar did not sign any legal documents, and respondent remained the purported attorney of record, Gonchar communicated with Firm clients and offered case direction and legal advice, frequently using his Gmail address, which improperly identified him as an attorney. Moreover, respondent crafted Gonchar's job description and ensured a venue for his continued practice of real estate law over two-and-a-half years. This arrangement clearly benefitted respondent, introducing the Firm to approximately 100 to 120 clients from whom the Firm derived seven percent of its revenue.

Based on the foregoing, we determine that respondent's misconduct warrants a baseline suspension of six-months. In crafting the appropriate discipline, however, we also consider aggravating and mitigating factors.

Having already weighed the duration, scale, and financial impact of respondent's misconduct in setting the baseline discipline, we give those factors no additional aggravating weight here.

In mitigation, respondent has a nearly seventeen-year long unblemished legal career and has an otherwise good reputation. However, we give little weight to respondent's community service as a mitigating factor, because it commenced after an ethics action was filed against him. Overall, we consider the mitigating factors insufficient to justify a downward adjustment of the six-month suspension we consider appropriate under Cermack.

We further determine to impose that six-month suspension prospectively. See In re Bernstein, 249 N.J. 357 (2022) (on a motion for reciprocal discipline, prospective two-year suspension, with conditions, imposed even though the attorney had never practiced law in New Jersey). Contrary to respondent's argument, there was no significant delay in the OAE filing its motion after respondent notified it of his misconduct. Moreover, respondent's request for the imposition of a retroactive suspension due to his voluntary abstention from the practice of law in New Jersey has no support in our disciplinary jurisprudence. Finally, respondent's desire to practice law in New Jersey while he is still serving his New York suspension does not justify the imposition of a retroactive suspension.

Thus, we determine to impose a six-month, prospective suspension.

Members Hoberman and Rivera voted to impose a one-year, prospective suspension.

Chair Gallipoli voted to impose an eighteen-month, prospective suspension.

Member Campelo 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: 
Johanna Barba Jones
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Edan E. Pinkas
Docket No. DRB 22-001

Argued: March 17, 2022

Decided: June 23, 2022

Disposition: Six-month suspension

Members	Six-Month Suspension	One-Year Suspension	Eighteen-Month Suspension	Absent
Gallipoli			X	
Singer	X			
Boyer	X			
Campelo				X
Hoberman		X		
Joseph	X			
Menaker	X			
Petrou	X			
Rivera		X		
Total:	5	2	1	1

Johanna Barba Jones
Chief Counsel