SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
Docket No. DRB 23-159
District Docket No. XIV-2023-0081E

In the Matter of Royce W. Smith
An Attorney at Law

Argued
October 19, 2023

Decided
January 3, 2024

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

Respondent appeared pro se.

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Introduction

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 the issuance of a January 22, 2018 order by the Disciplinary Board of the Supreme Court of Pennsylvania (the Pennsylvania Board) directing that respondent be publicly reprimanded.[1] The OAE asserted that respondent violated the equivalents of New Jersey RPC 3.3(a)(1) (making a false statement of material fact to a tribunal); RPC 3.3(a)(5) (failing to disclose to a tribunal a material fact knowing that the omission is reasonably certain to mislead the tribunal); RPC 4.1(a)(1) (making a false statement of material fact or law to a third person while representing a client); RPC 5.5(a)(1) (knowingly practicing law while ineligible); RPC 7.1(a) (engaging in false or misleading communications about the lawyer, the lawyer's services, or any matter in which the lawyer has or seeks a professional relationship); RPC 7.5(a) (using an impermissible firm name or letterhead); RPC 8.1(a) (making a false statement of material fact to disciplinary authorities); RPC 8.1(b) (failing to cooperate

[1] Pa. R.D.E. 204(a)(5) and Pa. R.D.E. 205(c)(8) authorize the Pennsylvania Board to impose public reprimands without further order of the Pennsylvania Supreme Court.

with disciplinary authorities); 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 conclude that a reprimand is the appropriate quantum of discipline for respondent's misconduct.

Respondent earned admission to the New Jersey bar in 2004 and to the Pennsylvania bar in 2005. Additionally, at the relevant times, he was admitted to practice law before the United States District Court for the Eastern District of Pennsylvania (the EDPA) and the United States District Court for the District of New Jersey (the DNJ), and maintained a practice of law in Philadelphia, Pennsylvania.

On January 22, 2018, the Pennsylvania Board issued an order directing that respondent be subject to a public reprimand in connection with his misconduct underlying this matter. On April 3, 2018, respondent received the public reprimand during an in-person proceeding before the Pennsylvania Board.

On March 31, 2020, the OAE filed a motion with our Court seeking respondent's immediate temporary suspension due to a substantial and unexplained shortage in his attorney trust account (ATA). Effective February 4,

2021, the Court temporarily suspended respondent, on consent, and dismissed the OAE's pending motion as moot. In re Smith, 245 N.J. 77 (2021). To date, respondent remains temporarily suspended.

On May 23, 2022, respondent received a censure for violating RPC 1.5(a) (charging an unreasonable fee), RPC 1.15(a) (engaging in negligent misappropriation of client funds), and RPC 1.15(d) (failing to comply with the recordkeeping requirements of R. 1:21-6). In re Smith, __ N.J. __ (2022), 2022 N.J. LEXIS 458 (Smith I).

In the first matter comprising Smith I, respondent represented a plaintiff in a medical malpractice matter which settled, in March 2018, for $49,000. In the Matter of Royce W. Smith, DRB 21-021 (Sept. 23, 2021) at 3. In June 2018, respondent created a settlement statement and mistakenly calculated his legal fee based on the gross, rather than the net, settlement. Ibid. Respondent also overcalculated his expenses by $753.50. Ibid. As a result of his miscalculation, he received $4,177.28 to which he was not entitled. Id. at 12.

In the second matter comprising Smith I, between November 2018 and April 2019, respondent repeatedly and negligently misappropriated client funds, in five client matters, by transferring funds from his ATA to his attorney business account, purportedly on behalf of those clients, prior to receiving any client funds. Id. at 7-9, 12.

In the third matter comprising Smith I, following a May 2019 demand audit, the OAE discovered that respondent had failed to maintain required records in accordance with R. 1:21-6. Id. at 5. We noted that respondent's lack of attention to his recordkeeping practices was so egregious that a bookkeeping firm and an experienced ethics attorney could not reconcile his attorney accounts. Id. at 13.

In determining that a censure was the appropriate quantum of discipline, we weighed respondent's alarming and repeated failure to account for his clients' entrusted funds against his lack prior discipline; his good faith, remedial efforts to improve his recordkeeping practices; the fact that he had stipulated to his misconduct and to a temporary suspension; and his purported intent not to practice law in New Jersey in the future. Id. at 18.

We required respondent, upon reinstatement from his temporary suspension, to complete two recordkeeping courses, pre-approved by the OAE, and to submit monthly reconciliations of his attorney accounts to the OAE, on a quarterly basis, for a two-year period. Id. at 18-19. We further required respondent to satisfy all the OAE's outstanding financial record requests and prohibited him from applying for pro hac vice admission in New Jersey until further order of the Court. Id. at 19. Finally, we required respondent to disgorge

to his client his improper fee in the medical malpractice matter and to place any unidentified client funds with the Superior Court Trust Fund. Ibid.

The Court agreed with our recommended discipline and conditions, except that it did not expressly prohibit respondent from applying for pro hac vice admission in New Jersey.

Effective August 16, 2022, the Supreme Court of Pennsylvania disbarred respondent, on consent, in connection with his failure to account for approximately $296,000 in missing client funds. Off. Of Disciplinary Counsel v. Smith, 2022 Pa. LEXIS 1211 (Aug. 16, 2022).

We now turn to the facts of this matter.

Facts

Following his 2005 admission to the Pennsylvania bar, respondent worked, for the next eleven years, at various New Jersey and Pennsylvania law firms. In his verified position statement to the Pennsylvania Office of Disciplinary Counsel (the ODC), respondent claimed that, during that timeframe, his employers routinely had arranged to renew his annual Pennsylvania attorney registration and to pay the accompanying assessment to the Pennsylvania Board's Attorney Registration Office (the Attorney Registration Office). Respondent maintained that he "was not involved in [that] process."

In February 2016, respondent ended his employment with the firm where he had been working, as a partner, since 2014, and began operating a solo practice of law. Respondent alleged that his departure from that firm "was a very contested and unhappy affair" resulting in several months of litigation until "a resolution was reached in January . . . 2017." Respondent further claimed that, following his departure, his prior firm did not forward his mail to his new law office. Respondent conceded, however, that he failed to notify the Attorney Registration Office of his new law firm address within thirty days of his departure from that firm, as Pa. R.D.E. 219(c)(3) requires.

On May 15, 2016, the Attorney Registration Office sent respondent, via mail only, the required attorney registration form for the July 1, 2016 through June 30, 2017 annual compliance period. Pursuant to Pa. R.D.E. 219, respondent was required to file the attorney registration form with the Attorney Registration Office, and pay the accompanying fee, by July 1, 2016.

In his verified position statement to the ODC, respondent claimed that, because he failed to update his law firm address with the Attorney Registration Office, the attorney registration form was sent to his former law firm. Because his former firm purportedly did not forward respondent's mail to his new law firm address, respondent alleged that he received no notice of the Attorney Registration Office's May 15, 2016 correspondence.

On July 1, 2016, the Attorney Registration office sent respondent a postcard reminding him of his obligation to file his attorney registration form and pay the accompanying fee. However, respondent claimed that he did not receive notice of that postcard because it had been sent to his prior firm. Respondent failed to complete the attorney registration form and pay the accompanying fee for the 2016 through 2017 compliance period by July 1, 2016, as Pa. R.D.E. 219 requires.

Consequently, on October 5, 2016, the Pennsylvania Supreme Court issued an order administratively suspending respondent, effective November 4, 2016.

Later, on the same date, the Attorney Registration Office sent respondent a letter (1) enclosing the October 5, 2016 administrative suspension order, (2) advising respondent to comply with the Pennsylvania rules governing administratively suspended attorneys, and (3) directing respondent to complete the annual attorney registration form before November 4, 2016, the effective date of his administrative suspension. Respondent claimed that he did not receive the Attorney Registration Office's October 5, 2016 letter because it had been sent to his former firm. Thus, respondent maintained that he was unaware, in October 2016, of his impending administrative suspension.

Following the effective date of his administrative suspension, respondent failed to comply with the Pennsylvania rules governing administratively suspended attorneys. Specifically, respondent failed to advise his clients, in non-litigation proceedings, of his administrative suspension and consequent inability to act as their attorney following the effective date of his suspension, as Pa. R.D.E 217(a) requires. Additionally, respondent failed to advise such clients to seek legal advice elsewhere to complete their matters. Moreover, respondent failed to disclose his administrative suspension to his clients and adversaries, in litigation proceedings, and failed to direct his clients to obtain substitute counsel, as Pa. R.D.E. 217(b) requires. Similarly, respondent failed to notify the EDPA, the DNJ, and our Court (via the OAE) of his administrative suspension, as Pa. R.D.E. 217(c) requires.[2] Finally, respondent failed to file with the Attorney Registration Office a verified statement of compliance with the Pennsylvania rules governing suspended attorneys, as Pa. R.D.E. 217(e)(1) requires within ten days of the effective date of an attorney's administrative suspension.[3]

[2] Pa. R.D.E 217(a), (b), and (c) contain similar notice requirements as R. 1:20-20(b)(9), (10), and (11) governing suspended attorneys in New Jersey.

[3] The Pa. R.D.E. 217(e)(1) verified statement of compliance is functionally equivalent to the R. 1:20-20(b)(15) affidavit of compliance in New Jersey.

Between November 4, 2016, the effective date of his administrative suspension, and December 19, 2016, the date he was restored to practice, respondent remained as the attorney of record in twelve separate Pennsylvania client matters. During that timeframe, respondent engaged in several instances of practicing law while administratively suspended.

Specifically, on November 4, 2016, in the Tucker v. Gordon matter, respondent filed, on behalf of Leora Tucker, an application to reinstate a complaint, a complaint and a notice to defend, and "two replies to [a] new matter" in a Pennsylvania state court. On December 14, 2016, respondent filed, in a Pennsylvania state court, affidavits of service reflecting that he had served the defendants in that matter with the complaint.

Between November 4 and December 16, 2016, in the Mt. Olivet Tabernacle Baptist Church client matter pending in the Philadelphia County Court of Common Pleas, respondent attended two depositions, filed a settlement memorandum, and attended a settlement conference on behalf of the church.

On November 14, 2016, respondent achieved a successful resolution, via arbitration, in the Big Brother Little Brother, LLC client matter, which had been litigated in the Philadelphia County Court of Common Pleas.

Additionally, on November 17, 2016, in the Smith v. Axelrod matter, respondent filed, on behalf of Tracey and Robert Smith, "a motion for extraordinary" relief in a Pennsylvania state court.

Also on November 17, 2016, respondent sent a letter of representation, on behalf of Carmen Brown, to the Southeastern Pennsylvania Transit Authority (SEPTA) regarding a motor vehicle accident.

Moreover, on November 22, 2016, respondent sent letters of representation to Betty Clark, in a personal injury matter, and to Valerie Williams, in a separate medical malpractice matter.

Finally, on December 8, 2017, respondent sent a letter to Eunice Christopher, a personal injury client, and achieved a $3,000 settlement for Juanya Barrow, a separate personal injury client.

On December 16, 2016, respondent alleged that he became aware of his administrative suspension after the EDPA notified him of his ineligible status, via a federal electronic filing system. Respondent claimed that, following the EDPA's notice, he immediately ceased practicing law. Three days after the EDPA's notice, on December 19, 2016, respondent filed the required annual attorney registration form with the Attorney Registration Office, paid the accompanying annual assessment, and was restored to practice.

Additionally, on December 19, 2016, respondent filed, with the Attorney Registration Office, the Pa. R.D.E. 217(e)(1) verified statement of compliance with the Pennsylvania disciplinary rules governing suspended attorneys. In his verified statement, which respondent executed under the "penalties provided by 18 Pa. C.S. § 4904,"[4] respondent stated:

> I have ceased and desisted from using all forms of communication that expressly or implicitly convey eligibility to practice law in the state courts of Pennsylvania, including but not limited to professional titles, letterhead, business cards, signage, websites and references to admission to the Pennsylvania bar.
>
> [Ex.A¶20.] [5]

In his verified position statement to the ODC, respondent claimed that he had "included that language because he was thinking of the two-day time period" between December 17, 2016, when he was no longer practicing law, and December 19, 2016, the date of his reinstatement.[6]

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[4] 18 Pa. C.S. § 4904(a) provides, in relevant part, that "[a] person commits a [second-degree misdemeanor] if, with [the] intent to mislead a public servant in performing his official function, he makes any written false statement which he does not believe to be true." Similarly, "[a] person commits a [third-degree misdemeanor] if he makes a written false statement which he does not believe to be true, on or pursuant to a form bearing notice, authorized by law, to the effect that false statements made therein are punishable."

[5] "Ex." refers to the exhibits appended to the OAE's July 18, 2023 brief in support of its motion for reciprocal discipline.

[6] It appears, based on respondent's version of events, that he completed the Pa. R.D.E. 217(e)(1) verified statement on December 17, 2016, two days before he was restored to practice in Pennsylvania.

Additionally, in his Pa. R.D.E. 217(e)(1) verified statement of compliance, respondent represented that "[t]here are currently no clients or others I need to notify in accordance with Pa. R.D.E. 217(a), (b), and (c)." Finally, respondent stated that he had complied with "all applicable provisions of [Pa. R.D.E. 217(e)] by," among other things, "notifying . . . all other tribunals, courts, agencies[,] or jurisdictions in which I am admitted to practice."

In his verified position statement to the ODC, respondent conceded that his Pa. R.D.E. 217(e)(1) verified statement of compliance contained misrepresentations, given his failure to notify his clients, adversaries, and the jurisdictions in which he was admitted to practice of his administrative suspension, as Pa. R.D.E. 217 requires. Respondent, however, claimed that, "in this context," he did not intend to engage in any deception. Specifically, respondent emphasized that, as soon as he discovered his administrative suspension on December 16, 2016, he took prompt steps to restore his license. Respondent also noted that "[i]t would have been devastating to notify his clients" of his suspension when he anticipated being promptly restored to practice. However, respondent noted that "[p]erhaps he was wrong, but in viewing the history of this case, it was not an intentional misrepresentation. He did not know what to do." Additionally, respondent claimed that, when he spoke with the Attorney Registration Office regarding the required steps to restore his

license, he "was not told that he needed to inform his clients about the situation." Finally, respondent maintained that he did not notify the EDPA of his administrative suspension, as Pa. R.D.E. 217(c) requires, because, in his view, that jurisdiction already had notified him of his suspension.

Respondent also conceded that, between November 4 and December 16, 2016, he had engaged in "law-related activities" without "acting under the supervision of" an attorney admitted to practice law in Pennsylvania, in good standing, pursuant to Pa. R.D.E. 217(j).[7]

In his verified position statement to the ODC, respondent denied having intended to mislead or to engage in any unethical conduct. Respondent stressed that his departure from his prior firm was "very difficult" and that it was "very unfortunate" that his former law firm did not notify him of the correspondence they purportedly had received from the Attorney Registration Office. Nevertheless, respondent conceded that he had an independent obligation to ensure that he properly renewed his Pennsylvania law license. Respondent noted that "he had been spoiled by years of working with firms" and "just didn't think about" renewing his law license. Although respondent "could have notified" his

[7] In Pennsylvania, suspended attorneys may perform legal work of "a preparatory nature," provided they are properly supervised by an attorney with an active Pennsylvania law license. See Pa. R.D.E. 217(j)(2). By contrast, in New Jersey, suspended attorneys cannot engage in any legal services whatsoever, either as a principal or as an employee of another. See R. 1:20-20(b)(1) and (3) and RPC 5.5(a)(2).

clients of his administrative suspension, he stated that it would have been "devastating for him" to have provided such notice, considering that he was restored to practice soon after he had learned of his ineligible status.

Respondent urged, in mitigation, his then lack of prior discipline and his successes as a law student and trial lawyer. Respondent also emphasized his service as an adjunct faculty member of a Philadelphia-based law school. Consequently, respondent urged the ODC to consider the imposition of private discipline as the appropriate quantum of discipline for his misconduct.

Findings of the Pennsylvania Board

On January 22, 2018, the Pennsylvania Board issued a letter and an order concluding that respondent be subject to a public reprimand at an in-person proceeding. In its letter, the Pennsylvania Board concluded that respondent violated: (1) Pa. RPC 1.16(a)(1) by failing to withdraw from representing his clients during his administrative suspension; (2) Pa. RPC 5.5(a) by practicing law while administratively suspended; (3) Pa. RPC 8.4(c) by mispresenting, in his Pa. R.D.E. 217(e)(1) verified statement of compliance, that he had fully complied with the applicable provisions of Pa. R.D.E. 217 governing suspended attorneys; (4) Pa. RPC 8.4(d) by failing to comply with the Pennsylvania Supreme Court's October 5, 2016 administrative suspension order; (5) Pa.

R.D.E. 203(b)(3) by failing, for ten months after his February 2016 departure from his prior firm, to notify the Attorney Registration Office of his new law firm address; (6) Pa. R.D.E. 217(b) by failing to promptly notify his clients of his administrative suspension and of his consequent inability to act as their attorney, following which respondent failed to withdraw from his clients' litigation matters; (7) Pa. R.D.E. 217(e) by failing to file the required verified statement of compliance within ten days of the effective date of his administrative suspension; and (8) Pa. R.D.E. 217(j)(1) and (5) by engaging in law related activities during his suspension, without arranging to be supervised by another attorney with an active Pennsylvania law license.

In its letter, the Pennsylvania Board observed that respondent's purported "non-receipt" of the annual registration form "was a consequence of [his] own doing" by failing to update his address with the Attorney Registration Office. Additionally, the Pennsylvania Board found that, after respondent had "received actual knowledge" of the Pennsylvania Supreme Court's October 5, 2016 administrative suspension order, he "still failed to comply with the order."

On April 3, 2018, the Pennsylvania Board publicly reprimanded respondent. During that live proceeding, the Pennsylvania Board noted that respondent had practiced law while administratively suspended, between November 4 and December 19, 2016, in connection with several client matters.

The Pennsylvania Board noted that respondent failed to file the required Pa. R.D.E. 217(e)(1) verified statement of compliance with the rules governing suspended attorneys within ten days of the effective date of his administrative suspension. Additionally, the Pennsylvania Board found that respondent "maintained" a law office and "held [himself] out as eligible to practice law." The Pennsylvania Board also noted that respondent failed to "promptly notify [his] clients and others of [his] administrative suspension, nor did [he] move for leave to withdraw from [his] clients' cases that were pending in the Philadelphia [County] Court of Common Pleas." The Pennsylvania Board determined that respondent had misrepresented, in his Pa. R.D.E. 217(e)(1) verified statement of compliance, (1) that he had no clients or others that he needed to notify of his suspension, and (2) that he had notified all other jurisdictions in which he was admitted to the practice law of his suspension.

The Pennsylvania Board summarized respondent's position that he did not knowingly practice law while administratively suspended. In determining that respondent had engaged in unethical conduct, however, the Pennsylvania Board neither expressly accepted nor rejected respondent's position. Finally, the Pennsylvania Board weighed, in mitigation, respondent's lack of prior discipline at that time, the fact that he had "practiced for a short time in a relatively small

number of client matters," and the fact that he had accepted responsibility for his actions.

Respondent failed to notify the OAE of his Pennsylvania discipline, as R. 1:20-14(a)(1) requires.

The Parties' Submissions to the Board

In its written submission to us, the OAE asserted that respondent's unethical conduct in Pennsylvania constituted violations of RPC 3.3(a)(1); RPC 3.3(a)(5); RPC 4.1(a)(1); RPC 5.5(a)(1); RPC 7.1(a); RPC 7.5(a); RPC 8.1(a); RPC 8.1(b); RPC 8.4(c); and RPC 8.4(d).

Specifically, the OAE argued that respondent violated RPC 5.5(a)(1) by practicing law while administratively suspended (the equivalent, in New Jersey, of administrative ineligibility), between November 4 and December 19, 2016, in connection with several client matters. The OAE acknowledged that "a question remains" regarding whether respondent "was actually aware of ineligibility." However, in the OAE's view, respondent had "constructive" knowledge of his ineligibility to practice law.

In support of its argument that respondent possessed such constructive knowledge, the OAE relied on In re Clausen, 213 N.J. 461 (2013). As detailed below, in that matter, from September 2009 through January 2011, Clausen

remained ineligible to practice law in New Jersey for failing to pay the annual assessment to the New Jersey Lawyers' Fund for Client Protection (the CPF). During that timeframe, Clausen continued to practice law while ineligible until a Superior Court judge had confronted him regarding his ineligible status, prompting Clausen to take "immediate" steps to restore his license. Although the CPF had notified Clausen of his ineligibility, via mail to his home address of record, Clausen claimed that he was unaware of the CPF's letters, which, in his view, "must have been lost in a pile of mail." Clausen, however, acknowledged that he previously had made late payments to the CPF. We determined that, at a minimum, Clausen was "constructively aware of his ineligible status" because, as a New Jersey solo practitioner, he knew that he was responsible to pay the annual assessment to the CPF to maintain his law license.

The OAE argued that, like Clausen, respondent knew that (1) annual payments were required to maintain his Pennsylvania law license, (2) he did not make such payments for the 2016 through 2017 annual compliance period, and (3) as a solo practitioner, he had sole responsibility to ensure his compliance with annual attorney registration requirements in Pennsylvania. Consequently, the OAE argued that respondent had constructive knowledge of his ineligibility to practice law.

Based on its view that respondent had constructive knowledge of his ineligibility to practice law, the OAE argued that respondent violated RPC 3.1(a)(1) by falsely holding himself out as a licensed Pennsylvania attorney in court and arbitration proceedings. Specifically, the OAE noted that respondent submitted pleadings and correspondence to Pennsylvania state courts as the attorney for various parties when he should have known that he was ineligible to practice law. Similarly, the OAE argued that respondent violated RPC 3.3(a)(5) by failing to disclose to Pennsylvania state courts his ineligibility to practice law, given that the concealment of his ineligible status was reasonably certain to mislead Pennsylvania courts. Finally, the OAE alleged that respondent violated RPC 4.1(a)(1) by failing to disclose his ineligible status to other parties.

Moreover, the OAE charged respondent with having violated RPC 7.1(a) and RPC 7.5(a) by falsely and continuously holding himself out as a Pennsylvania attorney to clients, via letters of representation, and to courts and other parties, via various "submissions" to those entities. The OAE maintained that there has been "a divergence of precedent" regarding whether RPCs 7.1(a) and RPC 7.5(a) apply to situations wherein an attorney misrepresents the status of their law license to others.

Specifically, in In re Griffiths, 200 N.J. 431 (2009), we determined that, although an attorney knowingly misrepresented the status of his law license to

courts and others, RPC 3.3(a)(1), RPC 4.1(a), and RPC 8.4(c) more appropriately encapsulated that misconduct. We, thus, dismissed the RPC 7.1(a) charge. By contrast, in In re Garagozzo, 240 N.J. 53 (2019), we sustained the RPC 7.1(a) and RPC 7.5(a) charges for an attorney who continued to hold himself out as eligible to practice law, via the use of an attorney letterhead, despite his awareness of his ineligible status in Pennsylvania. The OAE argued that, if we continue the "precedential trend outlined in Garagozzo," we should find that respondent violated RPC 7.1(a) and RPC 7.5(a) by holding himself out as eligible to practice law in Pennsylvania despite his administrative suspension.

Further, the OAE charged respondent with having violated RPC 8.1(b) and RPC 8.4(d) by failing to timely file his Pa. R.D.E. 217(e)(1) verified statement of compliance with the rules governing suspended Pennsylvania attorneys. The OAE noted that the Pa. R.D.E. 217(e)(1) statement of compliance is equivalent to the R. 1:20-20(b)(15) affidavit that all suspended New Jersey attorneys must file in connection with their suspensions. Because the failure to timely file the required R. 1:20-20 affidavit in New Jersey constitutes per se violations of RPC 8.1(b) and RPC 8.4(d), the OAE argued that respondent's failure to timely file the equivalent document in Pennsylvania, likewise, constituted violations of RPC 8.1(b) and RPC 8.4(d).

Finally, the OAE argued that respondent violated RPC 8.1(a) and RPC 8.4(c) by falsely stating, in his Pa. R.D.E. 217(e)(1) verified statement of compliance, that he had no clients or others that he needed to notify of his administrative suspension and, further, that he had notified all other jurisdictions in which he was admitted to the practice law of his suspension.

In support of its recommendation for a censure, the OAE analogized respondent's conduct to the censured attorney in Garagozzo, 240 N.J. 53.

In that matter, following his administrative suspension in Pennsylvania, Garagozzo failed to comply with the Pennsylvania rules governing suspended attorneys and continued to practice law while ineligible. When Garagozzo applied for reinstatement, he falsely certified, in his Pa. R.D.E. 217(e)(1) statement of compliance, that he had fully complied with applicable disciplinary rules governing suspended attorneys, despite having failed to inform his clients, adversaries, and the appropriate courts of his suspension. We found that Garagozzo had knowledge of his ineligible status, based on his receipt of both the Attorney Registration Office's notice of his impending suspension and the Pennsylvania Supreme Court's subsequent suspension order. In the Matter of John Joseph Garagozzo, DRB 18-330 (March 25, 2019) at 12-13. In determining that a censure was the appropriate quantum of discipline, we weighed Garagozzo's failure to participate in the Pennsylvania disciplinary proceeding

against his otherwise unblemished career of more than thirty years at the bar. Id. at 16-17.

The OAE argued that, unlike Garagozzo, who had no prior discipline, respondent received a 2022 censure, in Smith I, albeit for unrelated conduct that occurred after the misconduct underlying the instant matter. Nevertheless, the OAE alleged that respondent's "constructive awareness of his ineligibility at worst is less" condemnable "than Garagozzo's actual awareness" of his ineligible status. The OAE also urged, as aggravation, respondent's failure to notify New Jersey disciplinary authorities of his Pennsylvania discipline.

At oral argument before us, respondent stressed that his misconduct in this matter arose out of his "tumultuous" departure from his former firm and the formation of his solo practice of law. Respondent maintained that, prior to forming his own law practice, his employers always had handled his annual attorney registration and, consequently, that he was unaware of his administrative suspension until the EDPA's December 16, 2016 notification. Following the EDPA's notification, respondent claimed that, in his "rush" to complete the Pa. R.D.E. 217(e)(1) verified statement of compliance and gain readmission to practice law, he made a mistake by "checking" a "box" stating that he had complied with the Pennsylvania rules governing administratively

suspended attorneys. Respondent, however, alleged that he did not engage in any intentional acts of deception towards the Attorney Registration Office.

Additionally, respondent urged us to not impose any discipline based on his view that he is "being punished" for conduct that he had engaged in "years ago." Finally, respondent emphasized that he is no longer practicing law and that no clients suffered any ultimate harm in connection with his conduct.

Analysis and Discipline

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 Pennsylvania, the standard of proof in attorney disciplinary proceedings is that the "[e]vidence is sufficient to prove unprofessional conduct if a preponderance of the evidence establishes the conduct and the proof . . . is clear and satisfactory." Office of Disciplinary Counsel v. Kissel, 442 A.2d 217

(Pa. 1982) (quoting In re Berland, 328 A.2d 471 (Pa. 1974)). Moreover, "[t]he conduct may be proven solely by circumstantial evidence." Office of Disciplinary Counsel v. Grigsby, 425 A.2d 730 (Pa. 1981) (citations omitted). Here, in his verified position statement to the ODC, respondent admitted to much of the facts underlying his misconduct but claimed that he did not knowingly practice law while administratively suspended (the equivalent, in New Jersey, of administrative ineligibility).

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;
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> (C) the disciplinary or disability order of the foreign jurisdiction does not remain in full force and effect as the result of appellate proceedings;
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> (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.

We conclude that none of the above subsections apply to this case. As discussed below, the crux of respondent's misconduct was his misrepresentations, in a sworn statement to the Pennsylvania Disciplinary Board, concerning his compliance with that jurisdiction's rules governing suspended attorneys. Consistent with applicable New Jersey disciplinary precedent for engaging in similar acts of deception, we determine that respondent's misconduct warrants the imposition of identical discipline in New Jersey – a reprimand.

Violations of the Rules of Professional Conduct

Turning to the charged violations, we determine that the record contains clear and convincing evidence that respondent violated RPC 5.5(a)(1); RPC 8.1(a); RPC 8.1(b); RPC 8.4(c); and RPC 8.4(d). However, we determine to dismiss, for lack of clear and convincing evidence, the charges that respondent violated RPC 3.3(a)(1); RPC 3.3(a)(5); RPC 4.1(a); RPC 7.1(a); and RPC 7.5(a). Each violation is separately addressed below.

RPC 5.5(a)(1)

RPC 5.5(a)(1) prohibits an attorney from engaging in the unauthorized practice of law by, among other things, practicing law while administratively ineligible.

Here, respondent violated RPC 5.5(a)(1) by practicing law while administratively suspended, in Pennsylvania, following his failure to complete the annual attorney registration form and to pay the accompanying assessment, for the 2016 through 2017 compliance period. Specifically, between November 4, 2016, the effective date of his ineligibility, and December 16, 2016, the date he purportedly had discovered his ineligible status, respondent engaged in the unauthorized practiced of law by filing, in at least one Pennsylvania state court, and in connection with at least two client matters, a complaint; a motion to reinstate a complaint; a motion for "extraordinary relief;" and various correspondence. Additionally, during that same timeframe, and in connection with two Pennsylvania client matters, respondent attended depositions, settlement conferences, and at least one arbitration proceeding, resulting in a successful verdict. Further, he sent letters of representation to at least two clients and an additional letter notifying SEPTA of his representation of a third client. Finally, respondent obtained a $3,000 settlement for a personal injury client.

Although an attorney's knowledge of his ineligibility is not required to sustain an RPC 5.5(a)(1) charge, the quantum of discipline is enhanced when an attorney knowingly practices law while ineligible. Compare In the Matter of Jonathan A. Goodman, DRB 16-436 (March 22, 2017) (admonition for attorney who practiced law during two periods of ineligibility; he was unaware of his

ineligibility), and In re Mordas, 246 N.J. 461 (2021) (reprimand for attorney who, despite his awareness of his ineligibility to practice law, twice appeared before the Superior Court in connection with his client's criminal matter; the attorney's ATA records also revealed that he had engaged in the unauthorized practice of law through a minimum of five ATA transactions in connection with three client matters).

Relying on Clausen, 213 N.J. 461, the OAE urged us to reject respondent's position that he did not knowingly practice while ineligible and, instead, find that respondent had constructive knowledge of his ineligibility.

In Clausen, we granted a District Ethics Committee's motion for discipline by consent and determined that a reprimand was the appropriate quantum of discipline for an attorney who, between September 28, 2009 and January 31, 2011, practiced law while administratively ineligible for failing to pay the annual assessment to the CPF. In the Matter of Paul Franklin Clausen, DRB 13-010 (April 22, 2013) at 1. On January 31, 2011, Clausen appeared before a Superior Court judge who confronted him regarding his ineligible status, following which Clausen "immediately" contacted the CPF and took the steps necessary to obtain reinstatement that same day. Id. at 1-2.

Although the CPF had sent Clausen, via mail to his home address, "late notices" and copies of the orders declaring him administratively ineligible to

practice law, Clausen maintained that the CPF's correspondence "must have been lost in a pile of mail." Id. at 2. Clausen, however, acknowledged that his failure to sort through his mail did not excuse his misconduct. Ibid. Clausen further conceded that, in the past, he had made late payments to the CPF. Ibid.

We determined that, under these circumstances, Clausen:

> was, at a minimum, constructively aware of his ineligible status. As a licensed New Jersey attorney, [Clausen] knew that annual payments were required to maintain that license and he had to know that he had not made those payments. As a sole practitioner, [Clausen] was the person responsible for the payment of the CPF fee, which he admittedly failed to do in a timely manner in the past. He is not associated with a New Jersey law firm and, therefore, could not claim to have reasonably relied upon someone else to have made the CPF payments on behalf of all lawyers.
>
> [Id. at 3.]

More recently, in In re Fronapfel, 237 N.J. 433 (2019), at various times between September 2007 and September 2010, the Court declared Fronapfel ineligible to practice law in New Jersey for failing to pay the annual assessment to the CPF. During the ethics hearing in that matter, Fronapfel testified that she previously had paid the annual assessment to the CPF, via personal check, for the 2003 through 2006 annual compliance periods. In the Matter of Stacy B. Fronapfel, DRB 18-121 (Oct. 15, 2018) at 2. However, for the 2007 compliance period, Fronapfel failed to pay the annual assessment, despite the CPF having

sent her the attorney registration materials, in April and July 2007. Ibid. Consequently, on September 24, 2007, the Court declared her ineligible to practice law on that basis. Id. at 2-3. Fronapfel claimed that she was unaware of her ineligible status and that she could not recall having received the Court's ineligibility order. Id. at 3. However, Fronapfel maintained that she "could not say unequivocally" that she had not received the Court's order. Ibid. Additionally, Fronapfel maintained that the registration materials "might have been lost in the mail," given that she had experienced issues receiving other mail at her home address. Ibid. Fronapfel did not pay the required annual assessment for the 2007 and 2008 compliance periods until October 2008. Ibid. During that timeframe, despite her ineligibility to do so, Fronapfel engaged in motion practice, before the Superior Court. Ibid.

Following her 2007 through 2008 period of ineligibility, Fronapfel timely paid the annual assessment to the CPF for the 2009, 2011, and 2012 compliance periods. Id. at 4. However, on September 27, 2010, the Court declared Fronapfel ineligible to practice law for failing to pay the annual assessment for that year until October 19, 2010, when she was restored to practice. Ibid. During that three-week timeframe, Fronapfel practiced law while ineligible but claimed that she was unaware of her ineligibility. Ibid.

We determined that, like Clausen, Fronapfel handled her own registration materials, year after year, and paid the annual assessment herself. Id. at 10. Despite Fronapfel's awareness of her obligations to pay the annual assessment early each year, Fronapfel took no action, in 2007, to track down her registration materials. Ibid. Indeed, Fronapfel failed to pay the severely delinquent assessment until thirteen months later, in October 2008. Ibid. Although we did not expressly resolve whether Fronapfel knowingly practiced law while ineligible, we determined that Fronapfel's conduct was similar to that of the attorney in Clausen and determined that a reprimand was the appropriate quantum of discipline. Id. at 11. The Court agreed with our recommended discipline.

Here, based on the circumstances underlying respondent's relatively brief period of ineligibility, we determine there is no clear and convincing evidence that he knowingly practiced law while ineligible. Unlike Fronapfel, who, for years, as a solo practitioner, paid the annual assessment to the CPF herself, respondent became a solo practitioner only in February 2016, nine months before his administrative suspension, prior to which he continuously had worked for law firms that had arranged to pay the required annual assessment in Pennsylvania. Although respondent bears responsibility for failing to update his law firm address with the Attorney Registration Office, which failure resulted

in the attorney registration materials being sent to his former law firm, that failure alone did not place respondent constructively on notice of his ineligibility.

Moreover, unlike Clausen and Fronapfel, whose ineligibility periods spanned more than one year, respondent's administrative suspension spanned only forty-two days, until December 19, 2016. Specifically, on December 16, 2016, after the EDPA advised respondent of his ineligibility, respondent claimed that he ceased practicing law and took prompt steps to restore his license. Finally, in contrast to Clausen, who acknowledged that he previously had failed to timely pay the annual assessment to the CPF, and Fronapfel, whom the Court declared ineligible to practice law on two occasions, it does not appear, on this record, that respondent previously had practiced law while administratively suspended in Pennsylvania and had experience in curing same.[8]

Significantly, in the Pennsylvania Board's January 22, 2018 letter and order, and during its April 3, 2018 public reprimand, the Pennsylvania Board neither expressly accepted nor rejected respondent's contention that he did not knowingly practice law while administratively suspended. Indeed, whether

[8] Although our Court previously had declared respondent ineligible to practice law in 2007, 2010, 2015, and 2016, there is no indication that respondent practiced law in New Jersey during those years.

respondent knowingly practiced law while administratively suspended did not appear to be relevant to the outcome of his Pennsylvania disciplinary matter.

It is well-settled that, in New Jersey reciprocal disciplinary proceedings, our de novo review of the record "involves a limited inquiry, substantially derived from and reliant on the foreign jurisdiction's disciplinary proceedings." In re Barrett, 238 N.J. 517, 522 (2019) (in connection with the OAE's motion for reciprocal discipline from a Utah Supreme Court order suspending an attorney for 150 days, the Court found no clear and convincing evidence that the attorney had knowingly misappropriated law firm funds, given that, during the Utah disciplinary proceedings, the attorney was afforded only a limited opportunity to present evidence of a business dispute that may have existed between the attorney and his law firm; in New Jersey, if an attorney proves such a business dispute defense by clear and convincing evidence, disbarment will not invariably result for knowing misappropriation of law firm funds; by contrast, in Utah, there is no recognized business dispute defense for knowing misappropriation of law firm funds). Here, as in Barrett, respondent did not appear to have the opportunity, during the Pennsylvania disciplinary proceeding, to adequately present his defense that he did not knowingly practice law while administrative suspended.

In conclusion, based on the relatively short period of respondent's administrative suspension; the fact that he only recently had begun operating a solo practice of law at the time of his administrative suspension; his apparent lack of any prior administrative suspensions in Pennsylvania; and the fact that his arguments concerning his purported ignorance of his administrative suspension did not appear to be relevant to the outcome of the Pennsylvania disciplinary proceeding, we determine that, based on this record, although respondent violated RPC 5.5(a)(1) by practicing law while ineligible, there is no clear and convincing evidence that he did so knowingly.

RPC 3.3(a)(1), RPC 3.3(a)(5), and RPC 4.1(a)

RPC 3.3(a)(1) prohibits a lawyer from knowingly making a false statement of material fact or law to a tribunal, whereas RPC 3.3(a)(5) prohibits a lawyer from failing to disclose to a tribunal a material fact knowing that the omission is reasonably certain to mislead the tribunal. Similarly, RPC 4.1(a) prohibits a lawyer from knowingly making a false statement of material fact or law to a third person.

The OAE argued that, considering its theory that respondent had constructive notice of his administrative suspension, respondent violated these RPCs by holding himself out as a licensed Pennsylvania attorney in court or in

arbitration proceedings and by failing to disclose his ineligible status to courts and third parties.

Attorneys who knowingly mispresent the status of their law licenses to courts and third parties have been found to have violated RPC 3.3(a)(1) and (5) and RPC 4.1(a). See In re Feinstein, 216 N.J. 339 (2013) (one-year suspension for attorney who knowingly made multiple brazen misrepresentations about his eligibility to practice law to his clients, adversaries, a judge, and judiciary employees; from 1994 through 2005, the Court declared the attorney ineligible to practice law for failing to pay the annual assessment to the CPF; in September 2005, the Court administratively revoked his license; the attorney discovered the revoked status of his licensed in March 2007; in April 2010, knowing that his license was still administratively revoked, the attorney appeared for a Superior Court trial in a matter in which he previously had corresponded with the court and defense counsel; before the jury was brought in, the judge's court clerk queried the attorney regarding why his name was not listed in the Lawyers' Diary and Manual; the attorney replied that he did not understand why his name was not listed and claimed that there must have been a mistake; defense counsel then jokingly asked the attorney whether he was eligible to practice, to which the attorney replied that he was; thereafter, the attorney advised the judge, in her chambers, that he was not licensed to practice law in New Jersey and requested

that she admit him pro hac vice for trial; the judge refused and adjourned the proceeding).

Here, given our conclusion that the record lacks clear and convincing evidence that respondent knowingly practiced law while ineligible, we also find no clear and convincing evidence that respondent made any knowing misrepresentations concerning his status as an attorney to courts or third parties. Indeed, unlike Feinstein, who, for years, had been acutely aware that he did not have an active New Jersey law license, nothing in the Pennsylvania disciplinary record before us contradicts respondent's claim that he did not learn of his administrative suspension until December 16, 2016, following which he ceased practicing law until his license was restored, three days later, on December 19. Consequently, on this record, we determine to dismiss, for lack of clear and convincing evidence, the RPC 3.3(a)(1) and (5) and RPC 4.1(a) charges.

RPC 7.1(a) and RPC 7.5(a)

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

Similarly, RPC 7.5(a) prohibits a lawyer from using a law firm name, letterhead, or other professional designation that violates RPC 7.1(a).

The OAE argued that respondent violated these RPCs by continuing to hold himself out as a Pennsylvania lawyer in good standing, in various correspondence to Pennsylvania courts and to his clients, despite his ineligible status.

In Griffiths, between December 2003 and May 2004, the attorney remained on "involuntary" "inactive status" in Pennsylvania for failing to comply with that jurisdiction's CLE requirements. In the Matter of Steven H. Griffiths, DRB 09-104 (Aug. 27, 2009) at 3. While on inactive status, Griffiths continued to improperly practice law, in connection with several civil matters, throughout which he held himself out as an attorney with an active Pennsylvania law license. Id. at 6-7. We found that Griffiths was well-aware of his ineligibility to practice law, given his receipt of multiple letters from the Pennsylvania CLE Board warning him of his transfer to inactive status. Id. at 17.

Although we determined that Griffiths had violated RPC 3.3(a)(1), RPC 4.1(a), and RPC 8.4(c) by misrepresenting the status of his Pennsylvania license to a court and to others, and by holding himself out as an attorney in good standing in that jurisdiction by continuing to represent clients, we determined to dismiss the RPC 7.1(a) charge as inapplicable. Id. at 11. Specifically, we

observed that RPC 7.1(a) "is invoked when an attorney makes false claims about the services or results that he or she can achieve in a matter." Ibid. By contrast, we found that Griffith's misrepresentations regarding his eligibility were "subsumed" by the RPC 3.3(a)(1), RPC 4.1(a), and RPC 8.4(c) charges. Ibid.

In Garagozzo, the Pennsylvania Supreme Court issued an order administratively suspending Garagozzo, effective January 8, 2014, for failing to comply with Pennsylvania's CLE requirements. In the Matter of John Joseph Garagozzo, DRB 18-330 (March 25, 2018) at 3. Although Garagozzo was aware of his ineligible status, given his receipt of multiple warning letters advising him of his impending administrative suspension, he continued to practice law while ineligible in connection with four client matters. Id. at 4. On June 8, 2015, the Pennsylvania Supreme Court restored Garagozzo to practice and, on April 12, 2016, the ODC filed a formal ethics complaint against him for his misconduct. Id. at 5. Garagozzo, however, failed to answer the formal ethics complaint and, thus, the allegations contained therein were deemed admitted, pursuant to Pa. R.D.E. 208(b)(3). Id. at 5-6. Based on the admitted allegations in the formal ethics complaint that Garagozzo continued to hold himself out as eligible to practice law, via the use of his attorney letterhead, we determined that he violated RPC 7.1(a) and RPC 7.5(a), among other RPCs for additional misconduct. Id. at 9.

We recently reiterated that a violation of RPC 7.1(a) can be sustained if, among other scenarios, a lawyer makes false or misleading communications regarding the status of his license. See In re Harmon, __ N.J. __ (2022), 2022 N.J. LEXIS 658 (among other serious ethics violations, the attorney violated RPC 7.1(a) by misrepresenting, on her letterhead, that she was admitted to practice law in Pennsylvania, even though she was administratively suspended; the attorney not only knowingly continued to practice law while administratively suspended, but advised a court that she intended to continue to do so based on her frivolous view that disciplinary authorities had no jurisdiction over her).

In the instant matter, unlike the attorneys in Harmon and Garagozzo, who were both acutely aware of their respective administrative suspensions when they issued correspondence on false letterheads, there is no clear and convincing evidence that respondent engaged in any knowing acts of deception regarding his status as a lawyer during his brief administrative suspension. Indeed, unlike in Harmon, the record before us is devoid of a single communication from respondent made during his administrative suspension. Further, the record contains no information regarding the nature of respondent's letterhead during his administrative suspension. Consequently, on this record, we determine to dismiss the RPC 7.1(a) and RPC 7.5(a) charges for lack of clear and convincing evidence.

RPC 8.1(b) and RPC 8.4(d)

RPC 8.1(b) requires an attorney to "respond to a lawful demand for information from . . . [a] disciplinary authority." In turn, RPC 8.4(d) prohibits an attorney from engaging in conduct prejudicial to the administration of justice.

The OAE argued that respondent violated these RPCs by failing to timely file his Pa. R.D.E. 217(e)(1) verified statement of compliance with the rules governing suspended Pennsylvania attorneys.

In New Jersey, R. 1:20-20(b)(15) requires a suspended attorney, within thirty days of an order of suspension, to "file with the Director the original of a detailed affidavit specifying by correlatively numbered paragraphs how the disciplined attorney has complied with each of the provisions of this rule and the Supreme Court's order." In the absence of an extension from the Director, failure to file an affidavit of compliance pursuant to R. 1:20-20(b)(15) within the time prescribed "constitute[s] a violation of RPC 8.1(b) . . . and RPC 8.4(d)." R. 1:20-20(c).

In In re Fogle, 235 N.J. 417 (2018), the Pennsylvania Supreme Court administratively suspended an attorney for failing to renew his annual attorney registration and to pay the accompanying assessment to the Attorney Registration Office. In the Matter of Kevin C. Fogle, DRB 17-358 (April 11, 2018) at 3, 22. Following his administrative suspension, Fogle failed to notify

his clients, adversaries, and the appropriate courts of his ineligible status, as Pa. R.D.E. 217 requires, and continued to practice law. Id. at 22. Additionally, Fogle altogether failed to file the required Pa. R.D.E. 217(e)(1) verified statement of compliance, which we determined was the equivalent of the R. 1:20-20(b)(15) affidavit of compliance in New Jersey. Ibid. Citing R. 1:20-20(c), we found that Fogle's failure to file the required Pennsylvania statement of compliance constituted violations of RPC 8.1(b) and RPC 8.4(d). Ibid.

Here, as in Fogle, respondent violated RPC 8.1(b) and RPC 8.4(d) by failing to file, with the Attorney Registration Office, the required Pa. R.D.E. 217(e)(1) verified statement of compliance within ten days of the effective date of his administrative suspension, as that Pennsylvania rule requires. Respondent failed to file the required verified statement until December 19, 2016, more than one month after the expiration of the ten-day deadline.

RPC 8.1(a) and RPC 8.4(c)

RPC 8.1(a) prohibits a lawyer from knowingly making a false statement of material fact in connection with a bar admission application or in connection with a disciplinary matter. Similarly, RPC 8.4(c) prohibits an attorney from engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation. It

is well-settled that a violation of RPC 8.4(c) requires intent. See In the Matter of Ty Hyderally, DRB 11-016 (July 12, 2011).

As the OAE alleged, respondent violated RPC 8.1(a) and RPC 8.4(c) by misrepresenting, in his Pa. R.D.E. 217(e)(1) verified statement of compliance filed with the Attorney Registration Office, that he had no clients or others that he needed to notify of his administrative suspension, pursuant to Pa. R.D.E. 217(a), (b), and (c). Moreover, respondent falsely stated, in the same statement of compliance, that he had notified all other jurisdictions in which he was admitted to the practice of law of his administrative suspension. Respondent, however, altogether failed to notify his clients and adversaries and our Court, the DNJ, and the EDPA of his administrative suspension, as the Pennsylvania rules require.

Respondent conceded, in his verified position statement to the ODC, that he made such misrepresentations in connection with his attempt to gain prompt readmission to the Pennsylvania bar. However, respondent argued that he did not intend to engage in any deception because he had anticipated being restored to practice shortly after he filed the verified statement. In respondent's view, it would have been "devastating" to notify his clients of his suspension at that time. Further, respondent claimed that, when he spoke with the Attorney

Registration Office regarding his administrative suspension, he was not expressly advised to notify his clients of his suspension.

However, regardless of the timing of respondent's submission of his verified statement of compliance, the economic impact of notifying his clients of his suspension, and whether the Attorney Registration Office expressly reminded respondent of his obligation to comply with the notice requirements of Pa. R.D.E. 217, respondent had an independent obligation to ensure that he complied with the rules governing all administratively suspended attorneys in Pennsylvania. Rather than attempt to obtain belated compliance with those rules and truthfully explain those efforts, respondent elected to lie, in a sworn statement to an arm of the Pennsylvania Disciplinary Board, in an attempt to promptly restore his license.

In sum, we find that respondent violated RPC 5.5(a)(1); RPC 8.1(a); RPC 8.1(b); RPC 8.4(c); and RPC 8.4(d). We determine to dismiss, for lack of clear and convincing evidence, the allegations that respondent violated RPC 3.3(a)(1); RPC 3.3(a)(5); RPC 4.1(a); RPC 7.1(a); and RPC 7.5(a). The sole issue left for our determination is the appropriate quantum of discipline for respondent's misconduct.

Quantum of Discipline

Respondent practiced law while ineligible in Pennsylvania for more than one month, between November 4 and December 16, 2016. As detailed above, in our view, there is no clear and convincing evidence that he did so knowingly. Ordinarily, an admonition will result when an attorney practices law while ineligible but is unaware of the ineligibility. See In re Warren, 249 N.J. 4 (2021) (between October 20 and November 17, 2017, the attorney practiced law while administratively ineligible in New Jersey by appearing in court on two occasions – once as a municipal prosecutor and the second time as counsel to a party in Superior Court; there was no evidence that the attorney was aware of his ineligibility when he engaged in the misconduct; prior reprimand for unrelated misconduct).

Here, the crux of respondent's misconduct was his misrepresentations, in his belated Pa. R.D.E. 217(e)(1) verified statement, concerning his compliance with Pennsylvania's rules governing suspended attorneys. Respondent's misconduct in that regard is strikingly similar to the censured attorney in Garagozzo.

As previously discussed, in Garagozzo, on January 8, 2014, the Pennsylvania Supreme Court issued an order administratively suspending the attorney for failing to comply with that jurisdiction's CLE requirements. In the

Matter of John Joseph Garagozzo, DRB 18-330 at 3. During the six months prior to the effective date of his administrative suspension, the Pennsylvania CLE Board had twice warned Garagozzo of his impending suspension. Ibid. Despite receiving the warning letters, Garagozzo failed to comply with Pennsylvania's CLE requirements. Ibid. Thereafter, Garagozzo received a letter from the Attorney Registration Office enclosing a copy of his suspension order, along with copies of the applicable Pennsylvania rules governing suspended attorneys, guidance on how to comply with those rules, and instructions on rectifying his CLE deficiencies. Ibid.

Despite his knowledge of his administrative suspension, Garagozzo (1) failed to comply with Pennsylvania's rules governing suspended attorneys; (2) continued to maintain an office for the practice of law; (3) continued to hold himself out as eligible to practice law, through the established use of his letterhead; and (4) and practiced law while ineligible to do so, on behalf of at least four clients. Id. at 4. Specifically, Garagozzo made a total of six court appearances, on behalf of two clients, in connection with their municipal court matters. Ibid. Additionally, Garagozzo represented a third client before an administrative law judge regarding the expungement of a child abuse report. Ibid. Garagozzo also represented that same client, before the Philadelphia County Court of Common Pleas, regarding a child custody matter. Ibid. Finally,

Garagozzo continued to provide pre-paid legal services to members of a local union in connection with an unknown number of client matters. Id. at 5.

On June 8, 2015, eighteen months after the effective date of his administrative suspension, Garagozzo was restored to practice after he satisfied the necessary CLE requirements and filed his belated Pa. R.D.E. 217(e)(1) verified statement of compliance. Ibid. However, Garagozzo falsely certified, in his verified statement, that he had complied with each of the rules governing suspended attorneys in Pennsylvania, despite his failure to notify his clients, the judges, and opposing counsel of his suspension. Ibid.

On April 12, 2016, the ODC filed a formal ethics complaint against Garagozzo. Ibid. However, Garagozzo failed to answer the complaint and, despite proper service, failed to appear at both the prehearing conference and the ethics hearing, both of which proceeded without his participation. Id. at 5-6. Consequently, the allegations contained in the ODC's complaint were deemed admitted, pursuant to Pa. R.D.E. 208(b)(3). Id. at 7. For his misconduct, the Supreme Court of Pennsylvania imposed a two-year suspension. Id. at 6. Garagozzo then failed to notify the OAE of his Pennsylvania discipline.

Following the OAE's motion for reciprocal discipline, we determined that Garagozzo's extensive practice of law while ineligible, misrepresentations to disciplinary authorities concerning his compliance with Pennsylvania rules

governing suspended attorneys, and misrepresentations to clients regarding the status of his license warranted either a censure or a three-month suspension. Id. at 16. Weighing Garagozzo's failure to answer the Pennsylvania disciplinary complaint, resulting in that matter proceeding as a default, against his otherwise unblemished career of more than thirty years at the bar, we determined that the aggravating and mitigating factors were in equipoise and, thus, a censure was the appropriate quantum of discipline. Id. at 16-17. The Court agreed with our recommended discipline.

Here, like Garagozzo, respondent misrepresented, in his Pa. R.D.E. 217(e)(1) verified statement of compliance, that he had complied with the Pennsylvania disciplinary rules governing administratively suspended attorneys by, among other things, certifying that he had notified his clients, adversaries, and the appropriate courts and jurisdictions of his suspension. In truth, respondent altogether failed to comply with the notice requirements of Pa. R.D.E. 217. Rather than attempt to achieve belated compliance with the Pennsylvania rules governing suspended attorneys, respondent lied, in a sworn statement to an arm of the Pennsylvania Disciplinary Board, in order to obtain prompt reinstatement in that jurisdiction, without having to divest his firm of its clients.

Nevertheless, unlike Garagozzo, whose extensive practice of law while administratively suspended spanned eighteen months, respondent's practice of law while administratively suspended, though similarly extensive in that it involved several client matters, spanned only thirty-nine days, until December 16, 2016, when he ceased practicing law after the EDPA had notified him of his ineligible status. Moreover, unlike Garagozzo, who was acutely aware of his administrative suspension based on his receipt of multiple notices from Pennsylvania disciplinary authorities, there is no clear and convincing evidence that respondent knew he had been administratively suspended until informed by the EDPA. Further, unlike Garagozzo, who allowed his disciplinary matter in Pennsylvania to proceed by way of a default,[9] respondent participated in the Pennsylvania disciplinary proceeding and appeared to cooperate with the disciplinary authorities of that jurisdiction.

However, in contrast to Garagozzo's otherwise unblemished disciplinary history of more than thirty years at the bar, respondent has a 2022 censure, in Smith I, for engaging in an egregious lack of attention to his recordkeeping practices and for repeatedly failing to account for his clients' entrusted funds. We note, however, that principles of progressive discipline do not apply in this

[9] See In re Kivler, 193 N.J. 332, 342 (2008) (citations omitted) (an attorney'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").

matter because his instant misconduct occurred prior to the misconduct underlying Smith I. See In the Matter of Howard Alan Miller, DRB 20-189 (May 20, 2021) (noting that, because the misconduct had occurred prior to the misconduct of an earlier default matter, the attorney did not fail to learn from past mistakes and, thus, the concept of progressive discipline did not apply).

Finally, despite the passage of seven years since respondent's misconduct in this matter concluded, we accord minimal mitigating weight to this factor, in light of his failure to notify the OAE of his Pennsylvania discipline, as R. 1:20-14(a)(1) requires. See In the Matter of Wayne Robert Rohde, DRB 21-169 (January 21, 2022) (an attorney's failure to report his 2005 conviction for fleeing the scene of an accident constituted an aggravating factor that outweighed the potential for mitigation, even considering the significant passage of time since the underlying offense).

Conclusion

In conclusion, although respondent engaged in nearly identical acts of deception toward Pennsylvania disciplinary authorities as the censured attorney in Garagozzo, many of the aggravating factors present in that matter do not apply here. Respondent did not allow his Pennsylvania matter to proceed as a default, did not knowingly practice law while administratively suspended, and his

ineligibility period of more than one month was far shorter than Garagozzo's eighteen-month ineligibility period. Consequently, we determine that a reprimand – the same discipline imposed in Pennsylvania – is the appropriate quantum of discipline necessary to protect the public and preserve confidence in the bar.

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
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Royce W. Smith
Docket No. DRB 23-159

Argued: October 19, 2023

Decided: January 3, 2024

Disposition: Reprimand

Members	Reprimand
Gallipoli	X
Boyer	X
Campelo	X
Hoberman	X
Joseph	X
Menaker	X
Petrou	X
Rivera	X
Rodriguez	X
Total:	9

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