SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
Docket No. DRB 24-060
District Docket No. XIV-2021-0383E

In the Matter of Christopher Roy Higgins
An Attorney at Law

Argued
May 24, 2024

Decided
September 11, 2024

Diane M. Yandach appeared on behalf of the
Office of Attorney Ethics.

Respondent waived appearance for oral argument.

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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 disciplinary stipulation between the Office of Attorney Ethics (the OAE) and respondent. Respondent stipulated to having violated RPC 5.5(a)(1) (practicing law while suspended) and RPC 8.4(d) (engaging in conduct prejudicial to the administration of justice).

For the reasons set forth below, we unanimously determine that respondent violated the Rules of Professional Conduct and that a term of suspension is the appropriate quantum of discipline for his misconduct. However, we are unable to reach a consensus among the eight participating Members regarding the appropriate length of suspension. As set forth below, four Members voted to recommend the imposition of a one-year suspension and four Members voted to recommend the imposition of a six-month suspension.

Ethics History

Respondent earned admission to the New Jersey bar in 2012. During the relevant timeframe, he maintained a practice of law in Blawenburg, New Jersey. He has a recent disciplinary history consisting of a reprimand, a censure, and a

three-month suspension – all of which proceeded as defaults – and a separate, concurrent three-month suspension, in a non-default matter.

Temporary Suspension Order

On September 21, 2018, the Court temporarily suspended respondent in connection with his failure to cooperate with an ethics investigation. In re Higgins, 235 N.J. 214 (2018). On May 10, 2019, the Court restored respondent to the practice of law. In re Higgins, 237 N.J. 585 (2019).

Higgins I

On June 17, 2021, the Court reprimanded respondent, in his first default matter, for his violation of RPC 1.4(b) (failing to communicate with a client) and RPC 8.1(b) (failing to cooperate with disciplinary authorities). In re Higgins, 247 N.J. 18 (2021) (Higgins I).

In that matter, on December 6, 2016, a client retained respondent to represent him as plaintiff in a landlord-tenant matter. In the Matter of Christopher Roy Higgins, DRB 18-195 (November 29, 2018) at 3. However, by January 14, 2017, the client had not received any information from respondent concerning the status of his matter, prompting the client to repeatedly contact respondent for such information. Ibid. Several days later, in January 2017,

respondent notified the client that he "had been delayed by personal problems, but had filed a complaint and was awaiting a court date." Ibid. However, when the client contacted the court, he discovered that respondent had not, in fact, filed a complaint on his behalf. Id. at 3-4. Thereafter, on January 23, 2017, the client notified respondent that he was terminating his services. Id. at 4. Despite having terminated respondent's services, the client received a court notice stating that his landlord-tenant matter had been scheduled for a February 22, 2017 hearing. Ibid. Respondent did not appear for the hearing and, thus, the client "resolved the matter pro se." Ibid. Thereafter, respondent failed to reply to the District Ethics Committee's (the DEC) request for a written explanation concerning his misconduct. Id. at 7-8.

In determining that a reprimand was the appropriate quantum of discipline, we weighed, in aggravation, the fact that respondent had failed to answer the formal ethics complaint and, consequently, allowed the matter to proceed as a default. Id. at 9. The Court agreed.

Higgins II

Also, on June 17, 2021, the Court censured respondent, in his second default matter, for his violation of RPC 1.4(b) and RPC 8.1(b). In re Higgins, 247 N.J. 22 (2021) (Higgins II).

In that matter, in August 2016, a client retained respondent in connection with his efforts to collect upon an unpaid debt. In the Matter of Christopher Roy Higgins, DRB 18-326 (March 21, 2019) at 3-4. After the debtor agreed to send respondent $130 in monthly installment payments towards the client's unpaid debt, the client allowed respondent to keep $43.33 of the debtor's monthly payments to satisfy the balance of his legal fee. Id. at 4. However, by September 2017, respondent's $86.67 attorney trust account check to the client, representing one of the monthly installment payments, was returned for insufficient funds. Id. at 4-5. Thereafter, respondent largely ignored his client's numerous attempts to communicate regarding the issuance of a replacement check. Id. at 5. Following his failure to issue a replacement check, respondent failed to reply to the DEC's requests for information regarding the matter. Id. at 5-6.

In determining that a censure was the appropriate quantum of discipline, we weighed, in aggravation, respondent's "disregard for the ethics process," noting he had allowed the matter to proceed as a default. Id. at 10. The Court agreed.

Higgins III

Effective July 15, 2021, the Court suspended respondent for three months, in his third default matter, for his violation of RPC 1.3 (lacking diligence); RPC 8.1(b); RPC 8.4(c) (engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation); and RPC 8.4(d). In re Higgins, 247 N.J. 19 (2021) (Higgins III).

In that matter, in January 2017, a client retained respondent to represent her in connection with her mortgage modification application. In the Matter of Christopher Roy Higgins, DRB 19-040 (August 13, 2019) at 4. Respondent, however, failed to submit the required documents to the modification company, resulting in the scheduling of a sheriff's sale of the client's property. Id. at 5. Additionally, respondent lied to the client about having sent the documents to the modification company. Id. at 8. Compounding matters, respondent failed to submit to the DEC a written reply to the ethics grievance, refused to meet with the DEC investigator, and allowed the matter to proceed as a default. Ibid.

In determining that a three-month suspension was the appropriate quantum of discipline, we weighed, in aggravation, respondent's failure to learn from his past mistakes and his decision to "continue[] to ignore the ethics system" by, once again, allowing the matter to proceed as a default. Id. at 10-11. The Court agreed.

Higgins IV

Additionally, effective July 15, 2021, the Court suspended respondent for three months, concurrent to his three-month suspension in Higgins III, for his stipulated violation of RPC 1.1(a) (engaging in gross neglect); RPC 1.3; RPC 1.5(b) (failing to set forth in writing the basis or rate of the fee); RPC 1.15(a) (commingling); RPC 1.15(d) (failing to comply with the recordkeeping requirements of R. 1:21-6); RPC 1.16(c) (failing to comply with applicable law requiring notice to or permission of a tribunal when terminating a representation); RPC 1.16(d) (failing to protect a client's interests upon termination of the representation); RPC 3.2 (failing to expedite litigation); RPC 3.4(c) (failing to obey an obligation of a tribunal); RPC 8.1(b); and RPC 8.4(d). In re Higgins, 247 N.J. 20 (2021) (Higgins IV).

In that matter, between September 2017 and his September 2018 temporary suspension, respondent failed to cooperate with the OAE's financial audit, which revealed numerous recordkeeping infractions. In the Matter of Christopher Roy Higgins, DRB 19-456 (November 19, 2020) at 15, 18.

Moreover, in April 2017, respondent entered his appearance, in federal court, in connection with his representation of a client as a plaintiff in a civil matter. Id. at 10. In November 2017, following respondent's failure to appear for a status conference, the client sent the court a letter asserting that respondent

was not effectively representing his interests. Id. at 16. Thereafter, in December 2017, respondent failed to oppose a defendant's motion to dismiss his client's complaint and, in March 2018, failed to appear for a scheduled order to show cause hearing to address his inaction, resulting in the federal court holding him in contempt. Id. at 8, 17.

However, by February 2019, respondent had retained counsel; brought his records into compliance; filed a reply to the federal court's April 2018 ethics referral; and stipulated to his misconduct. Id. at 18-19.

In determining that a consecutive three-month suspension was the appropriate quantum of discipline for the totality of respondent's misconduct, we weighed his "persistent pattern of misconduct" against his ultimate cooperation with the OAE. Id. at 27. The Court agreed with our determination that a three-month suspension was the appropriate quantum of discipline; however, it imposed the suspension concurrent with respondent's three-month suspension in Higgins III. The Court further required that, prior to reinstatement, respondent demonstrate his fitness to practice law, as attested to by a mental health professional approved by the OAE.

Effective December 10, 2021, the Court restored respondent to the practice of law. In re Higgins, 249 N.J. 116 (2021).

We now turn to the matter currently before us.

Facts

As detailed above, effective July 15, 2021, the Court suspended respondent for three months for his misconduct underlying Higgins III and Higgins IV. The Court's June 17, 2021 suspension Order directed respondent to comply with R. 1:20-20, which required, among other obligations, that he, "within 30 days after the date of the order of suspension (regardless of the effective date thereof) 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 [O]rder."

On July 14, 2021, respondent submitted his R. 1:20-20 affidavit of compliance in which he stated that he was not "engaged in the private practice of law, but derive[d] income from my work as of counsel [to a firm], along with per diem work for various other firms and remote document review work." Subsequently, on October 19, 2021, respondent petitioned for reinstatement, pursuant to R. 1:20-21.

In his verified petition, despite certifying that he had not engaged in the private practice of law in any jurisdiction during his suspension, respondent disclosed that, during his suspension, he had worked as "a document reviewer" for two companies, Consilio Services LLC (Consilio) and Cambridge

Professional Group (Cambridge). Specifically, on May 11, 2021, in connection with the work that he performed for Cambridge, respondent signed a document titled, "Contract Attorney Agreement;" indeed, he twice electronically executed such a contract under the caption "Contract Attorney."

Consilio and Cambridge employ both licensed attorneys and law school graduates on a project-by-project basis to assist outside law firms with voluminous document productions in connection with litigation matters. Both Consilio and Cambridge limit certain document review projects to licensed attorneys, while other projects are inclusive of both attorneys and law school graduates. Respondent informed both Consilio and Cambridge of his suspension from the practice of law and, thus, was rejected from projects requiring a law license during his period of suspension.

Document reviewers, once selected for a project, would meet with one of Consilio's or Cambridge's review managers, as well as outside counsel (the retaining law firm), who would explain the nature of the assignment. Consilio and Cambridge provided the document reviewers with a written "protocol," which detailed the type of information that the reviewer should look for in the documents. Generally, reviewers were directed to look for responsiveness to certain topics or individuals, confidentiality, and privilege. The protocol also explained confidentiality and privilege in layperson terms. The protocols,

themselves, were marked "attorney work product" and "privileged and confidential."

Respondent, as a document reviewer, answered recruitment opportunities offered by Consilio and Cambridge. Those inquiries generally outlined the commitment requirements, who would be eligible to work on each project, and the pay rate. Additionally, respondent was asked about his experience in specific areas of the law, along with any potential conflicts of interest. Thereafter, respondent would send his resume to apply to staff the specific project.

When selected for an individual project, respondent was given a date and time to meet with one of Consilio or Cambridge's review managers, who would explain the project to him. Subsequently, the referring attorneys would meet with respondent to provide greater detail regarding the scope and nature of the project.

Contemporaneously, respondent was provided with a protocol. Although it varied with each project, respondent, in his role, performed a preliminary review of documents for confidentiality and privilege. Specifically, protocols required respondent: 1) to mark documents as "fully privileged, partially privileged, not privileged, or is the privilege status unclear;" 2) to mark items responsive to categories identified by the attorney; and 3) to identify references to individuals identified as likely to provide testimony.

Respondent did not make any final decisions regarding the assignments and had limited contact with outside counsel. He primarily communicated with the project managers who were employed by Consilio or Cambridge.

Between August 13 and December 3, 2021, Consilio compensated respondent for his work performed as a document reviewer. Likewise, on September 24, 2021, Cambridge compensated respondent for his document review work.

Based on the foregoing facts, respondent stipulated that, while suspended, he improperly furnished legal services and acted as the agent or employee of Consilio and Cambridge, in violation of R. 1:20-20. Thus, respondent admittedly engaged in the unauthorized practice of law on behalf of both Consilio and Cambridge, in violation of RPC 5.5(a)(1), by practicing law despite his disciplinary suspensions underlying Higgins III and Higgins IV. Further, respondent stipulated that he engaged in conduct prejudicial to the administration of justice, in violation of RPC 8.4(d) and R. 1:20-20(c), by reviewing documents produced in connection with pending litigation while he was suspended from the practice of law.

The Parties' Positions Before the Board

The OAE recommended no additional discipline for respondent's misconduct, citing the two-month delay in his reinstatement to the practice of law, following the expiration of his terms of suspension underlying Higgins III and Higgins IV. Specifically, the OAE asserted that respondent was eligible for reinstatement on October 15, 2021 and, on October 19, 2021, filed his petition for reinstatement. However, as a result of the OAE's initial objection, respondent was not reinstated to the practice of law until December 10, 2021, nearly two months after his eligibility date. The OAE's objection was based on his admitted improper provision of legal services, as a document reviewer, which he disclosed in his affidavit of compliance and, again, in his petition for reinstatement. Accordingly, in view of respondent having effectively served a two-month suspension as a result of his unauthorized practice of law, the OAE asserted that additional discipline was unwarranted.

Further, in mitigation, the OAE noted that respondent has abstained from alcohol, which had contributed to his prior discipline, and participated in various programs to aid in his recovery. The OAE also noted that respondent has not been disciplined since his December 10, 2021 reinstatement to the practice of law.

Respondent did not submit a brief for our consideration. However, in waiving oral argument before us, respondent expressed his agreement with the OAE's recommendations and conclusions.

Analysis and Discipline

Violations of the Rules of Professional Conduct

Following a review of the record, we determine that the stipulated facts clearly and convincingly support the charge that respondent practiced law while suspended, in violation of RPC 5.5(a)(1). However, we dismiss the charge that respondent violated RPC 8.4(d).

R. 1:20-20 governs the conduct of attorneys suspended from the practice of law in New Jersey. Specifically, R. 1:20-20(b) prohibits a suspended attorney from, among other activities, (1) practicing law "in any form either as a principal, agent, servant, clerk or employee of another;" (2) occupying, sharing, or using "office space in which an attorney practices law;" (3) furnishing "legal services" or giving "an opinion concerning the law or its application or any advice with relation thereto;" (4) drawing "any legal instrument;" (5) soliciting or procuring "any legal business or retainers for . . . any . . . attorney;" and (6) sharing "in any fee for legal services performed by any other attorney following the [suspended] attorney's prohibition from practice."

Respondent had actual notice of the restrictions R. 1:20-20 imposed on him, as a suspended attorney, considering the Court's disciplinary suspension Orders, in Higgins III and Higgins IV, which required him to "comply with R. 1:20-20 dealing with suspended attorneys."

Despite his sworn statements in his timely filed R. 1:20-20 affidavit of compliance, purportedly attesting to his total abstinence from the practice of law, respondent violated RPC 5.5(a)(1) by intentionally practicing law while suspended. RPC 5.5(a)(1) provides that "a lawyer shall not practice law in a jurisdiction where doing so violates the regulation of the legal profession in that jurisdiction," such as R. 1:20-20. The Court's June 17, 2021 Orders suspended respondent for a period of three months from the practice of law, effective July 15, 2021, and expressly prohibited him from engaging in the practice of law in any manner. Yet, respondent violated this Rule by accepting employment as a document reviewer and leveraging his legal skills for two vendors during his period of his suspension. The Court has consistently regarded such conduct as violating R. 1:20-20 and, consequently, RPC 5.5(a).

Specifically, while employed by both Consilio and Cambridge, respondent was responsible for conducting an initial review of documents, produced in connection with litigation, to determine confidentiality, privilege, and the nature of the document, pursuant to protocols prescribed by his

employers and outside counsel. Respondent also was required to mark documents as "fully privileged, partially privileged, not privileged, or is the privilege status unclear." In addition, as part of the document review, respondent flagged documents that were responsive to specific categories of interest identified by the assigning attorneys. Pursuant to well-settled precedent, respondent engaged in the practice of law, using his legal skill and ability to determine whether documents he reviewed should be deemed confidential and/or privileged.

Although respondent asserted that he never provided any legal representation or advice to any person, the Court consistently has held that the practice of law is not limited to litigation. "One is engaged in the practice of law whenever legal knowledge, training, skill, and ability are required." In re Jackman, 165 N.J. 580, 586 (2000) (quoting State v. Rogers, 308 N.J. Super. 59, 66, 67-70 (App. Div. 1998), certif. denied, 156 N.J. 385 (1998)). Most recently, in In re Oury, 256 N.J. 613 (2024), the Court rejected arguments similar to those offered by respondent, disbarring an attorney who provided services akin to paralegal and associate duties to multiple law firms during his period of suspension. Accordingly, we determine that respondent violated RPC 5.5(a)(1).

Next, the OAE asserted that, for the same reasons, respondent also violated RPC 8.4(d), which precludes an attorney from engaging in conduct

prejudicial to the administration of justice. Recently, we explicitly rejected such a theory. In In the Matter of Laura Rys, DRB 23-163 (January 8, 2023) at 11-12, we determined to dismiss the allegation that an attorney violated RPC 8.4(d). In that case, like here, the OAE alleged that the attorney violated this Rule simply by practicing law during her suspension and failing to adhere to the requirements of R. 1:20-20(b)(3). We noted that, typically, a violation of RPC 8.4(d) is found when the record demonstrates that an attorney's misconduct caused a waste of judicial resources, which was not the case. The attorney's misconduct was appropriately addressed by the other charged violations. Ibid. (citing In the Matter of Young Min Kim, DRB 19-134 (November 27, 2019) (the attorney, who engaged in two transactional matters, did not violate RPC 8.4(d) simply by practicing law while suspended; his misconduct was adequately addressed by RPC 5.5(a)(1)), so ordered, In re Kim, 241 N.J. 350 (2020)). The Court agreed. In re Rys, 256 N.J. 617 (2024).

In sum, we find that respondent violated RPC 5.5(a)(1). Further, we determine to dismiss the charge that respondent violated RPC 8.4(d). The sole issue left for our determination is the appropriate quantum of discipline for respondent's misconduct.

Quantum of Discipline

As a threshold matter, we reject the OAE's position that respondent deserves no additional discipline for his misconduct due to the delay in his reinstatement to the practice of law. Specifically, the OAE asserted that respondent was eligible for reinstatement on October 15, 2021 and, on October 19, 2021, filed his petition for reinstatement. However, as a result of the OAE's initial objection, respondent was not reinstated to the practice of law until December 10, 2021, nearly two months after his eligibility date. Accordingly, in view of respondent having effectively served two additional months of suspension as a result of his unauthorized practice of law, the OAE argued that additional discipline was unwarranted.

Neither disciplinary precedent nor the purpose of R. 1:20-20 support the OAE's recommendation. Notably, the OAE cited disciplinary precedent concerning an attorney who unknowingly practiced law while temporarily suspended and received only a three-month suspension. In re Phillips, 216 N.J. 584 (2014). Here, it is undisputed that respondent knew he had been suspended from the practice of law. Indeed, he timely filed his R. 1:20-20 affidavit the day before his disciplinary suspension became effective. Respondent, thus, knew that he was suspended from the practice of law, yet he provided legal services, as a contract attorney, to Consilio and Cambridge.

In our view, respondent's "delayed" restoration to the practice of law, as a direct result of his failure to comply with R. 1:20-20 by practicing law while suspended, does not operate as a mitigating factor in respect of the quantum of discipline. Respondent alone was responsible for that delay, considering his extensive and unauthorized practice of law, in violation of RPC 5.5(a)(1) and R. 1:20-20. Moreover, R. 1:20-21(i)(A) precludes us from "consider[ing]" a petition for reinstatement to the practice of law until a lawyer has demonstrated "full and timely compliance with R. 1:20-20. If compliance has not occurred . . . [we] shall not consider the petition until the expiration of six months from the date of filing of that proof of compliance." Here, despite the six-month time bar set forth in R. 1:20-21(i)(A), respondent's restoration to the practice of law occurred only two months after the expiration of his terms of suspension.

Also troubling is the OAE's assertion that respondent "essentially engaged in paralegal work [by] reviewing documents . . . for relevancy, confidentiality, and privilege." That argument is wholly at odds with the stipulated facts – that both Consilio and Cambridge limit certain document review projects to licensed attorneys, while other projects were available to both attorneys and law school graduates, and that respondent signed agreements to work with those vendors as a "contract attorney." Moreover, we and the Court have rejected the "mere paralegal" defense based on the plain language of R.

1:20-20(b)(1). See In the Matter of Edan E. Pinkas, DRB 22-001 (June 23, 2022) at 32-33 (noting, based on R. 1:20-20(b)(1), that the Court "has expressed its disapproval of using suspended and disbarred attorneys as law firm staff"), so ordered, 253 N.J. 227 (2023).

Moreover, it is well-settled that attorneys only receive credit for time spent absent from the practice of law when there is a related Court Order precluding the attorney from doing so. As we previously found in In the Matter of Stephen Robert Jones, DRB 23-052 (August 14, 2023), a delay in reinstatement does not constitute de facto discipline, and an attorney's reinstatement following an Order of suspension is governed by the suspension Order. Id. at 17-18.

> A delay in reinstatement, precipitated by failure to comply with the terms of a suspension, is an extension or furtherance of those initial proceedings; it is not . . . a "form of discipline" for later misconduct. If an attorney allegedly violates RPC 8.1(b), RPC 8.4(d), or both by failing to comply with R. 1:20-20 while suspended, then separate disciplinary proceedings must be initiated to address those alleged violations of the Rules of Professional Conduct.
>
> [Id. at 18.]

By way of further example, retroactive terms of suspension are appropriate only when an attorney has been temporarily suspended, by Order of the Court, following their notification of their criminal charges to the OAE, as

R. 1:20-13(a)(1) requires. See In re Dutt, 250 N.J. 181 (2022), and In re Walker, 234 N.J. 164 (2018) (the attorneys' respective terms of suspension were imposed retroactive to the effective dates of their temporary suspensions in connection with their criminal conduct).

As a final analogy, we consistently have found, and the Court has agreed, that a "voluntary withdrawal" from the practice of law provides no "basis to impose [a] suspension retroactively, and to do so would amount to no meaningful sanction." In the Matter of Brian J. Smith, DRB 20-318 (July 28, 2021) at 22-23, so ordered, 250 N.J. 44 (2022). See also In re Asbell, 135 N.J. 446, 459 (1994) (noting that an attorney's voluntary suspension was not pursuant to Court Order, and, thus, would not be considered a mitigating factor in the disciplinary proceeding) (citing In re Farr, 115 N.J. 231, 238 (1989) (noting that, if an attorney seeks to assert, as a mitigating factor, that he has been serving a suspension, the suspension must have been imposed by Court Order, and not through the voluntary action of an attorney, because in cases of a voluntary suspension, the Court is unable to assess and supervise the suspension)).

Accordingly, we are unmoved by the argument that respondent's delayed reinstatement to the practice of law, which was directly caused by his own violation of the Rules governing suspended attorneys, should be credited.

Attorneys who practice law while suspended have received discipline ranging from a lengthy term of suspension to disbarment, depending on the presence of other misconduct, the attorney's disciplinary history, and aggravating or mitigating factors. See, e.g., In re Phillips, 224 N.J. 274 (2016) (one-year suspension for an attorney who stipulated that, while suspended, he had secured consent to an adjournment of a matrimonial motion that was to be heard during the term of suspension, and assisted the client in the matter; the attorney claimed that he had engaged only in "secretarial duties," including (1) securing consent to the adjournment, (2) typing the letter requesting the adjournment for the pro se adversary's signature, which the adversary then transmitted to the court, at the attorney's direction, (3) delivering "paperwork" to his client at the courthouse prior to the hearing, (4) preparing his client's cross-motion, and (5) drafting a certification to the court wherein he acknowledged assisting his client with the adjournment and her cross-motion; we observed that, regardless of the attorney's characterizations of the tasks he performed, he clearly practiced law while suspended; in aggravation, we weighed the attorney's contempt for his ethics obligations and his extensive prior discipline, including an admonition for the unauthorized practice of law in Nevada, two censures, in default matters, for lack of diligence, failure to communicate with clients, and failure to cooperate with disciplinary authorities,

and a three-month suspension, in two consolidated default matters, for practicing law while suspended); In re Choi, 249 N.J. 18 (2021) (two-year suspension for an attorney who, following his indefinite suspension, in New York, for federal criminal convictions for money laundering and submitting false statements to federal authorities, represented a client, in New York state court, where he falsely certified that he was admitted to practice in New York; the attorney also maintained a law firm website that improperly claimed that he was admitted to practice in New York; finally, the attorney failed to comply with New York's affidavit of compliance rule for suspended or disbarred attorneys); In re Boyman, 236 N.J. 98 (2018) (three-year suspension for an attorney, in a default matter, who, for more than four years following his temporary suspension, represented borrowers in nineteen predominately commercial real estate transactions involving the same title company; when the title company discovered the attorney's suspended status, the attorney misrepresented to the title company that he had been restored to practice; additionally, despite the OAE's numerous attempts, spanning almost nine months, seeking the attorney's written reply to the ethics grievance, the attorney failed to respond, despite acknowledging receipt of the OAE's letters in a telephone conversation; in aggravation, we weighed the attorney's 2010 and 2014 censures, in default matters, in which he also failed to cooperate with disciplinary authorities; we

also weighed the fact that the attorney's misconduct had continued, unabated, for four years, in numerous high-value matters); In re Oury, 256 N.J. 613 (2024) (attorney disbarred for intentionally practicing law while suspended for nearly eight years, performing more than 1,900 hours of legal work for five New Jersey law firms; during that timeframe, the attorney engaged in a variety of substantive legal work, including conducting legal research, drafting legal documents, and directly communicating with the clients of the lawyers; following the attorney's receipt of the OAE's letter objecting to his reinstatement for providing legal services during his suspension, the attorney continued to practice law while suspended for an additional ten months; the attorney also refused to disclose the OAE's letter to the lawyers who employed him based on his unfounded personal opinion that the OAE's objection "just [didn't] make sense to me;" although the attorney knew that R. 1:20-20 governed his conduct while suspended, he chose to defy the Court's suspension Orders, thumbed his nose at the OAE's warnings regarding his conduct, and, to attempt to avoid accountability, concocted his own theories regarding the definition of the practice of law and the jurisprudence that governed his conduct; prior three-year suspension).

Here, respondent's practice of law while suspended was more extensive than that of the attorney in Phillips, who, in one client matter, secured consent to an adjournment of a matrimonial motion that was to be heard during his term

of suspension. By contrast, respondent provided legal services to two different vendors during his term of suspension.

Like Phillips, respondent has an extensive disciplinary history despite his relatively recent admission to the bar. Specifically, in 2021, respondent received a reprimand and a censure in Higgins I and Higgins II, respectively. Thereafter, he received three-month concurrent suspensions in Higgins III and Higgins IV, which, among other misconduct, concerned his failure to comply with a federal court's order to show cause addressing his mishandling of a client matter, resulting in the court finding him in contempt. Moreover, like Phillips, who had allowed four of his prior disciplinary matters to proceed as defaults, respondent failed to participate in the disciplinary investigations underlying Higgins I, Higgins II, and Higgins III, and, thereafter, allowed each of those matters to proceed as defaults.

Despite his extensive experience with the disciplinary system, respondent's misconduct in this matter demonstrates his ongoing indifference to his ethical obligations, and his demonstrated contempt for complying with court orders governing his conduct. See In re Zeitler, 182 N.J. 389, 398 (2005) ("[d]espite having received numerous opportunities to reform himself, [the attorney had] continued to display his disregard, indeed contempt, for our disciplinary rules and our ethics system").

In limited mitigation, respondent entered into a disciplinary stipulation, thereby conserving judicial resources.

Conclusion

On balance, we determine that the aggravation clearly outweighs the mitigation and that a term of suspension remains the appropriate quantum of discipline to protect the public and preserve confidence in the bar.

Chair Cuff and Members Menaker, Hoberman, and Rivera determined that respondent's misconduct warranted a one-year suspension, based on disciplinary precedent which has established a one-year suspension as the baseline sanction for the unauthorized practice of law. In the view of these Members, respondent should not be afforded any credit for candidly reporting his unauthorized practice of law to disciplinary authorities, given that he was obligated to independently and truthfully disclose his employment activities in his R. 1:20-20 affidavit of compliance and in his petition for reinstatement. Additionally, these Members found that respondent should have known that R. 1:20-20 clearly prohibited him from performing legal services, as a contract attorney for two vendors, during his suspension. From the perspective of these Members, considering respondent's extensive disciplinary history in his relatively short

career at the bar, there is no compelling mitigation sufficient to reduce the baseline level of sanction for practicing law while suspended.

Vice-Chair Boyer and Members Petrou, Rodriguez, and Spencer agree with their colleagues that the OAE's recommendation of no further discipline is not a sufficient sanction for the admitted misconduct here. At the same time, they found the analysis of the OAE, set forth below, to be persuasive in urging a recommended discipline of less than one year. At pages 9-10 of the Stipulation, under the heading of "OAE's Recommended Discipline," the OAE states:

> Here, Respondent essentially engaged in paralegal work in reviewing documents provided in discovery for relevancy, confidentiality and privilege. However, there is no evidence that Respondent was aware this conduct constituted the practice of law or that he was in violation of Rule 1:20-20.[1] Respondent readily admitted his conduct and fully cooperated with disciplinary authorities. Furthermore, Respondent's conduct was less egregious than that of attorneys who received one-year suspensions. Respondent did not retain clients, give legal advice, work in a law firm, confer with attorneys on legal strategy, send letters on behalf of any law office, or appear in court. Moreover, Respondent's employers were aware of his suspension and Respondent did not hold himself out as a licensed attorney in good standing.

[1] While lack of awareness of ethical rules or caselaw is not a defense to an ethical violation, it may serve as a mitigating factor. See In re Goldstein, 116 N.J. 1, 8 (1989) (finding an attorney's lack of knowledge that he cannot keep interest earned on his trust account a barrier to a finding of knowing misappropriation and considering his candid admission and cooperation with ethical authorities in mitigation).

Taking into account all of the facts and circumstances presented in the Stipulation and the record before the Board, Vice-Chair Boyer and Members Petrou, Rodriguez, and Spencer are of the view that a six-month suspension is the appropriate sanction in this case.

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. Mary Catherine Cuff, P.J.A.D. (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 Christopher Roy Higgins
Docket No. DRB 24-060

Argued: May 24, 2024

Decided: September 11, 2024

Disposition: Other

Members	One-Year Suspension	Six-Month Suspension	Absent
Cuff	X		
Boyer		X	
Campelo			X
Hoberman	X		
Menaker	X		
Petrou		X	
Rivera	X		
Rodriquez		X	
Spencer		X	
Total:	4	4	1

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