

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 08-077
District Docket No. XIV-2006-515E

IN THE MATTER OF
JAMES E. WHITE
AN ATTORNEY AT LAW

:
:
:
:
:
:
:

Decision

Argued: May 15, 2008

Decided: July 8, 2008

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

This matter came before us pursuant to R. 1:20-6(c)(1), which provides, in pertinent part: "A hearing shall be held only if the pleadings raise genuine disputes of material fact, if the respondent's answer requests an opportunity to be heard in mitigation, or if the presenter requests to be heard in aggravation." In this case, the parties agreed that, from

January 11, 2003 until September 6, 2005, respondent practiced law while he was on the Supreme Court's list of ineligible attorneys for failure to pay the annual assessment to the New Jersey Lawyers' Fund for Client Protection (CPF).

The Office of Attorney Ethics (OAE) recommends that respondent receive a reprimand or a short-term suspension. We determine to reprimand respondent.

Respondent was admitted to the New Jersey and New York bars in 1996 and 1997, respectively. He does not maintain an office for the practice of law in New Jersey.

In September 2007, as a matter of reciprocal discipline, the Supreme Court imposed a six-month suspension on respondent for his commingling of \$350 in personal funds with attorney trust account funds, making twenty-seven ATM withdrawals from the trust account, and negligently misappropriating at least \$2,752.98 in trust account funds during a nine-month period in the year 2001, violations of New Jersey RPC 1.15(a), R. 1:21-6(c)(1)(I)(2), and RPC 1.15(d). In re White, 192 N.J. 443 (2007).

From September 15, 1997 through September 12, 2005, respondent was on the Supreme Court's list of ineligible attorneys for failure to pay the annual assessment to the CPF.

Inasmuch as this matter is before us pursuant to R. 1:20-6(c)(1), the facts are taken from the complaint and the answer. The complaint alleges that respondent was employed by the New Jersey Office of Public Defender (PDO) from January 11, 2003 until his resignation, on September 6, 2005. In November 2003 and November 2004, respondent represented to the PDO that he was entitled to practice law in New Jersey, when he completed a "State of New Jersey Outside Activity Questionnaire" in which he "indicated he was entitled to practice law in New Jersey." During this time, however, respondent was ineligible to practice law. Accordingly, the complaint alleges, respondent violated RPC 5.5(a) (unauthorized practice of law) and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation).

Respondent did not file a formal answer to the complaint. Instead, he requested that the OAE accept a February 20, 2008 letter from him to OAE Deputy Ethics Counsel Lee A. Gronikowski, in lieu of a formal answer. In his letter, respondent admitted that he had been ineligible to practice law during the time that he worked for the PDO. He stated that he first received notice that he was in arrears on his annual assessment in September 2005, when a manager in the PDO so informed him. He then

resigned and paid fees in excess of \$800. He has not practiced law in New Jersey since his resignation.

Respondent offered several mitigating factors in his letter. First, he did not intentionally practice law in New Jersey while ineligible. Second, he "never engaged in any subterfuge by not paying [his] fees and practicing law while ineligible." He claimed that he neither knew nor thought about New Jersey's annual fee requirement because, from 1993 until the end of 2001, he lived in New York City. He also denied having received notification that fees were due during that time, which he attributed to his frequent relocations and the failure of his mail to be forwarded to each new address.

According to respondent, he had no reason to question his eligibility when he was hired by the PDO, as he was hired only after the PDO had completed "a thorough background check." Apparently, respondent understood that the background check would have included an inquiry into whether he was eligible to practice law in New Jersey. Indeed, when respondent asked the PDO manager who informed him of his ineligibility why he had not been apprised of this status when he was hired in 2003, she told him that it must have been an oversight on the PDO's background check. According to respondent, if he had learned of his

ineligibility when he was hired, he would have paid the arrears at that time.

Respondent also offered, in mitigation, his financial desperation at the time he was hired by the PDO. As described in our decision in In re White, DRB 06-344 (June 21, 2007) (slip op. at 8-9), in 2001, respondent incurred substantial expense and personal stress as the result of complications suffered by his wife during the birth of their son in Senegal, as well as her immigration to the United States; he lost clients following the September 11, 2001 terrorist attacks; and his office was burglarized in December of that year. In his letter to the OAE, respondent stated that, in 2002, he earned only \$7500. Accordingly, he "jumped" at the chance to work with the PDO, which provided health insurance to him and his family.

Finally, respondent stated that he had been ineligible due to "a very stupid oversight" on his part. He acknowledged that he should have taken it upon himself to be informed about the administrative requirements of practicing law in New Jersey and that he should not have relied upon the PDO's background check "as an indication of [his] eligibility to practice law in New Jersey."

In an April 1, 2008 letter to Office of Board Counsel, the OAE cited, as aggravating factors, respondent's disciplinary record, the length of his ineligibility, and "the lack of candor in his answer to the complaint." According to the OAE, respondent's six-month suspension is an aggravating factor. Moreover, he should have known that an annual assessment was due, both as a matter of common sense and because he was required to pay an annual fee to the State of New York, where he practiced for many years. The OAE did not identify the facts that supported its claim that respondent lacked candor in his answer to the complaint.

The undisputed facts establish that respondent engaged in unethical conduct. As stated previously, he was on the CPF's ineligible list from September 15, 1997 through December 20, 2005. Thus, he engaged in the unauthorized practice of law when he worked for the PDO, from January 11, 2003 until his resignation on September 6, 2005. Respondent's conduct violated RPC 5.5(a), which prohibits a lawyer from "practic[ing] law in a jurisdiction where doing so violates the regulation of the legal profession in that jurisdiction."

The complaint also charges respondent with engaging in conduct involving dishonesty, fraud, deceit or

misrepresentation, a violation of RPC 8.4(c). Presumably, this charge stems from respondent's representation that his license to practice law in New Jersey was "active" on two "State of New Jersey Outside Activity Questionnaire" forms, for the years 2003 and 2004. Respondent was required to complete this form in connection with his PDO job.

We determine to dismiss the RPC 8.4(c) charge against respondent. He would have violated that rule only if he had been aware of his ineligibility at the time that he completed these forms. The complaint does not allege that respondent knew that he was ineligible to practice law at any time. In his letter to the OAE, which the OAE accepted as an answer, respondent expressly denied that he was aware of his ineligibility. Thus, the record lacks clear and convincing evidence that, when respondent represented to the PDO that his license was active, he knew this information to be untrue.

An admonition is generally imposed upon attorneys who practice law while ineligible, but are unaware of their ineligibility. See, e.g., In the Matter of William C. Brummel, DRB 06-031 (March 21, 2006) (attorney practiced law during a four-month period of ineligibility; the attorney was unaware of his ineligible status); In the Matter of Richard J. Cohen, DRB

04-209 (July 16, 2004) (attorney practiced law during nineteen-month ineligibility); and In the Matter of Samuel Fishman, DRB 04-142 (June 22, 2004) (attorney, while ineligible to practice law, represented one client in a lawsuit and signed a retainer agreement in connection with another client matter; mitigating factors were the attorney's lack of knowledge of his ineligibility, his contrition at the hearing, his quick action in remedying the recordkeeping deficiency, and the lack of disciplinary history).

A reprimand is usually imposed when the attorney has an extensive ethics history, has been disciplined for conduct of the same sort, has also committed other ethics improprieties, or is aware of the ineligibility and practices law anyway. See e.g., In re Marzano, ___ N.J. ___ (2008) (motion for reciprocal discipline; attorney represented three clients after she was placed on inactive status in Pennsylvania; the attorney was aware of her ineligibility); In re Perrella, 179 N.J. 99 (2004) (attorney advised his client that he was on the inactive list and then practiced law; the attorney filed pleadings, engaged in discovery, appeared in court, and used letterhead indicating that he was a member in good standing of the Pennsylvania bar); In re Forman, 178 N.J. 5 (2003) (for a period of twelve years,

attorney practiced law in Pennsylvania while on the inactive list; compelling mitigating factors considered); In re Lucid, 174 N.J. 367 (2002) (attorney practiced law while ineligible; the attorney had been disciplined three times before: a private reprimand in 1990, for lack of diligence and failure to communicate with a client; a private reprimand in 1993, for gross neglect, lack of diligence, conduct prejudicial to the administration of justice, and failure to cooperate with disciplinary authorities; and a reprimand in 1995, for lack of diligence, failure to communicate with a client, and failure to prepare a written fee agreement); and In re Hess, 174 N.J. 346 (2002) (in a default matter, attorney practiced law while ineligible and failed to cooperate with disciplinary authorities; the attorney had previously received an admonition for practicing law while ineligible and failing to maintain a bona fide office in New Jersey).

In this case, the complaint does not allege whether respondent did or did not know that he was ineligible to practice law. Respondent, however, denies that he knew of the ineligibility. Were there nothing more, we could not impose discipline greater than an admonition for his violation of RPC 5.5(a). Respondent, however, has an ethics history, namely,

last year's six-month reciprocal suspension, based on the discipline imposed on him by the State of New York. Because of this aggravating factor, we determine that a reprimand is the appropriate quantum of discipline in this case.

Members Baugh and Clark did not participate.

We further determine to require respondent to reimburse the Disciplinary Oversight Committee for administrative costs and actual expenses incurred in the prosecution of this matter, as provided in R. 1:20-17.

Disciplinary Review Board
Louis Pashman, Chair

By: Julianne K. DeCore
Julianne K. DeCore
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

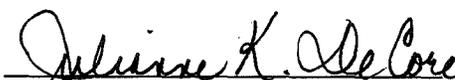
In the Matter of James E. White
Docket No. DRB 08-077

Argued: May 15, 2008

Decided: July 8, 2008

Disposition: Reprimand

<i>Members</i>	Disbar	Suspension	Reprimand	Dismiss	Disqualified	Did not participate
Pashman			X			
Frost			X			
Baugh						X
Boylan			X			
Clark						X
Doremus			X			
Lolla			X			
Stanton			X			
Wissinger			X			
Total:			7			2


Julianne K. DeCore
Chief Counsel