

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 03-355

IN THE MATTER OF
NICHOLAS R. PERRELLA
AN ATTORNEY AT LAW

Decision

Argued: November 20, 2003

Decided: February 18, 2004

Richard J. Engelhardt appeared on behalf of the Office of Attorney Ethics.

Respondent appeared *pro se*.

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

This matter was before us based on a motion for reciprocal discipline filed by the Office of Attorney Ethics ("OAE"), based on respondent's suspension in Pennsylvania.

Respondent was admitted to the New Jersey bar in 1983. He has no disciplinary history in New Jersey. On June 11, 2003, he was suspended for three months in Pennsylvania for violations of *RPC 1.16(a)(1)* (a lawyer shall not represent a client if the representation will result in a violation of the *Rules of Professional Conduct* or other law); *RPC 5.5(b)* (a lawyer shall not practice law in a jurisdiction where to do so would be in violation of the regulations of the profession in that jurisdiction); and three provisions of the *Pennsylvania Rule of Disciplinary Enforcement 217*, which sets forth requirements for attorneys placed on inactive status.

In June 1999, respondent entered an appearance as counsel for the plaintiff in *Nugent v. Imming, et al*, a Pennsylvania matter litigated in the Bucks County Court of Common Pleas. Although respondent was a member of the Pennsylvania bar, he had been placed on inactive status in 1996 for failure to complete continuing legal education requirements. Before filing the lawsuit, respondent told his client that he was not authorized to practice law in Pennsylvania. He did not, however, notify his adversary or the court of his inactive status. In January 2000, after learning of respondent's status, his adversary filed a motion to strike respondent's appearance. In February 2000, respondent's co-counsel filed a motion for respondent's *pro hac vice* admission. The motion was granted on March 5, 2001, almost two years after respondent first entered his appearance. In the interim, respondent engaged in discovery, filed pleadings, appeared in court, and used letterhead indicating that he was a member in good standing of the Pennsylvania bar, despite his knowledge that he was on inactive status and had not been admitted *pro hac vice*.

Respondent had not sought to be admitted *pro hac vice* until after the motion to strike his appearance had been filed.

A formal disciplinary complaint was filed on February 6, 2001. On June 24, 2002, a hearing committee issued a report recommending a public censure. On January 29, 2003, the Disciplinary Board of Pennsylvania also recommended a public censure, with three members voting for a private reprimand and one voting for an informal admonition.¹ Despite these recommendations, on June 11, 2003, the Supreme Court of Pennsylvania ordered respondent suspended for three months, effective July 11, 2003.

The OAE urges us to impose a reprimand. Respondent concurs with that recommendation.

Reciprocal discipline proceedings in New Jersey are governed by *Rule 1:20-14(a)(4)*, which provides as follows:

The Board shall recommend the imposition of the identical action or discipline unless the respondent demonstrates, or the Board finds on the face of the record on which the discipline in another jurisdiction was predicated that it clearly appears that:

- (A) the disciplinary or disability order of the foreign jurisdiction was not entered;
- (B) the disciplinary or disability order of the foreign jurisdiction does not apply to the respondent;
- (C) the disciplinary or disability order of the foreign jurisdiction does not remain in full force and effect as the result of appellate proceedings;

¹ *Pennsylvania Rule of Disciplinary Enforcement 204* provides for the following types of discipline: disbarment, suspension, public censure, probation, private reprimand, and private informal admonition.

- (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;
- (E) the misconduct established warrants substantially different discipline.

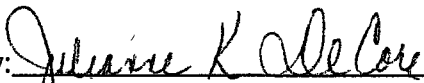
A review of the record does not reveal any conditions that would fall within the ambit of subparagraphs (A) through (D). With respect to subparagraph (E), in New Jersey, an admonition or a reprimand, not a suspension, is typically imposed for practicing law while ineligible. *See, e.g., In the Matter of Jeff H. Goldsmith*, Docket No. DRB 02-232 (2002) (admonition where attorney practiced law while ineligible to do so for failure to pay the annual assessment to the New Jersey Lawyers' Fund for Client Protection); *In the Matter of Edward Wallace, III*, Docket No. DRB 97-381 (1997) (admonition where attorney appeared in court while ineligible to practice law for failure to pay the annual assessment); *In re Lucid*, 174 N.J. 367 (2002) (reprimand for practicing law while ineligible for failure to pay the annual assessment; the attorney had received two prior private reprimands and a reprimand); *In re Ellis*, 165 N.J. 493 (2000) (attorney reprimanded when, one month after he had been reinstated from an earlier period of ineligibility, he was notified of his 1999 annual assessment obligation, failed to make timely payment, was again declared ineligible to practice law, and continued to perform legal work for two clients; he had received a prior reprimand for unrelated violations); *In re Kronegold*, 164 N.J. 617 (2000) (attorney reprimanded for practicing law while ineligible for failure to pay the annual assessment).

Here, respondent knew that he was not eligible to practice law in Pennsylvania for failure to fulfill continuing education requirements. Indeed, he so informed his client. In our view,

respondent's awareness of his ineligible status removes this matter from the admonition cases, in which the attorney usually is ignorant of his ineligibility. We unanimously voted to impose a reprimand. Four members did not participate.

We further required respondent to reimburse the Disciplinary Oversight Committee for administrative costs.

Disciplinary Review Board
Mary J. Maudsley, Chair

By: 
Julianne K. DeCore
Chief Counsel

**SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD**

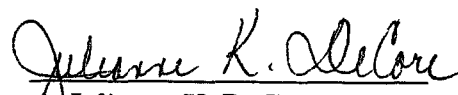
In the Matter of Nicholas R. Perrella
Docket No. DRB 03-355

Argued: November 20, 2003

Decided: February 18, 2004

Disposition: Reprimand

<i>Members</i>	<i>Disbar</i>	<i>Suspension</i>	<i>Reprimand</i>	<i>Admonition</i>	<i>Dismiss</i>	<i>Disqualified</i>	<i>Did not participate</i>
<i>Maudsley</i>			X				
<i>O'Shaughnessy</i>							X
<i>Boylan</i>							X
<i>Holmes</i>							X
<i>Lolla</i>			X				
<i>Pashman</i>			X				
<i>Schwartz</i>							X
<i>Stanton</i>			X				
<i>Wissinger</i>			X				
Total:			5				4


Julianne K. DeCore
Chief Counsel