SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 08-369
District Docket No. VIII-2007-0018E

IN THE MATTER OF	:
MARIA A. PEDRAZA	:
AN ATTORNEY AT LAW	:

Decision

Argued: January 15, 2009

Decided: March 4, 2009

Howard Sims appeared on behalf of the District VIII Ethics Committee.

Respondent appeared pro se.

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

This matter was before us on a recommendation for an admonition filed by the District VIII Ethics Committee ("DEC"), which we determined to bring on for oral argument. The complaint charged that respondent represented 183 clients while she was ineligible to practice law for failure to pay the annual

assessment to the New Jersey Lawyers' Fund for Client Protection ("CPF"). We determine that respondent should be reprimanded.

Respondent was admitted to the New Jersey bar in 2001. She has no disciplinary record.

According to the New Jersey Lawyers' Fund for Client Protection ("CPF") report, respondent was ineligible to practice law from September 27, 2004 to December 8, 2004, and from September 26, 2005 to May 19, 2006.

During respondent's second period of ineligibility, which lasted eight months, she represented 183 clients in various matters, the majority of which were municipal, traffic, and DWI cases. Respondent did not contest that she received notices that the CPF payment was due and that failure to pay would cause her to become ineligible to practice law in New Jersey. She admitted that she either knew or should have known that she was not eligible to practice law as of September 29, 2005, the date on which the Supreme Court order was published in the New Jersey Lawyer and the New Jersey Law Journal. The order was also mailed to her last known address.

Respondent admitted that she had no defense to her practicing law while ineligible ("I have no defense"). She added:

> [S]hort of me having been paralyzed from the neck down there would have been no defense

> for me not to have paid it. I acknowledge that completely.
>
> At that point I was kind of in a transitional phase in my life. Unfortunately, I prioritized it incorrectly. I should, obviously, have paid more attention. At the time, you know, I don't know – having just started anew, I looked at the fee paying as a kind of a technicality.
>
> Obviously, I understand now that there is much more to it than just the technical signing of a check and sending it in. That there is much more involved and much more connected to that.
>
> . . . .
>
> It was ignorance on my part and perhaps just not putting as much importance to it as it should have had.
>
> . . . .
>
> I need to pay attention to everything, not just assume that something is going to get swept under the rug.
>
> [T17-3 to T18-16.][1]

Respondent advanced several mitigating factors: (1) she paid the fee before the filing of ethics charges against her; therefore, her payment was not "remedial;" (2) there were no complaints about her handling of the cases during the relevant period; (3) she has always represented her clients zealously;

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[1] T denotes the transcript of the DEC hearing on April 10, 2008.

(4) this is the first blemish in her seven-year career; (5) she acknowledged her wrongdoing; and (6) she has learned her lesson.

The presenter, on the other hand, pointed out to the hearing panel that the duration of respondent's conduct, approximately eight months, and the number of court appearances that she made, 183, are significant. The presenter argued that, to the extent that respondent has represented 183 clients before a court of law, there have been 183 separate violations of the Rules of Professional Conduct, "[a]ny one of which would be individually prosecutable." Nevertheless, in the presenter's view, discipline stronger than a reprimand would be unwarranted. The presenter added: "I also believe that the panel should consider, at the very least, an admonition. So the panel should be free to choose between those two points. But at the same time keeping, again, in mind the fact that the violation is a serious one."

The hearing panel found that respondent's actions were "certainly serious." The panel concluded that, because respondent represented 183 clients when she was deemed ineligible, she committed 183 separate violations of the Rules of Professional Conduct. The panel remarked, however:

> The respondent's actions cannot be compared to those attorneys who may have done this for much lengthier period of time. Moreover, the panel deemed that a mitigating factor

> was the fact that the respondent had paid her fee in 2006 demonstrates that her failure to pay same in 2005 was merely an oversight as opposed to a blatant and purposeful violation of this essential ethical cannon.
>
> [HPR¶6.][2]

Following a review of the record, we find that the DEC's conclusion that respondent's conduct was unethical is fully supported by clear and convincing evidence.

Respondent did not dispute that she represented 183 clients during an ineligibility period of eight months. She admitted that she either knew or should have known that she was ineligible. She received numerous notices from the CPF, advising her that payment was due and that failure to pay the attorney assessment would cause her to be declared ineligible to practice law.

Despite being so advised, respondent did not pay the assessment. As a result, she was placed on the Supreme Court's list of ineligible attorneys on September 26, 2005. A copy of the Court order was published in the New Jersey Law Journal and the New Jersey Lawyer on September 29, 2005, and mailed to respondent. She testified that, at the time, she was in a

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[2] HPR denotes the hearing panel report.

transitional phase of her life and did not consider the CPF payment as a priority, viewing it as a technicality instead. She recognized that she should have paid closer attention to her CPF obligations.

We find that, except for respondent's clean disciplinary record, the mitigating factors that she advanced are not that persuasive. That her eventual payment of the 2005 assessment was not "remedial," as she put it, because it preceded the filing of the complaint against her does not lessen the seriousness of her conduct. To the contrary, it demonstrates her knowledge that the annual attorney assessment is a serious financial obligation that must be paid on time and not on a "remedial" basis, that is, after disciplinary charges have been lodged against an attorney. In fact, attorneys who have quickly remedied their CPF deficiencies after being informed of their ineligibility are usually the ones who, because of poor office management or reliance on staff, were not aware of their delinquency. In those instances, their dereliction will be treated with more indulgence than that of attorneys who are aware of the CPF notices and knowingly disregard them.

Similarly, that none of the 183 clients have complained about respondent's services during the time of her ineligibility does not mitigate her conduct. Presumably, they were unaware of

her ineligible status. Furthermore, it is an attorney's duty to represent clients zealously. Zealous representation of clients' interests is not mitigation; it is an essential obligation.

As to the appropriate degree of discipline for respondent's infractions, precedent makes it clear that an admonition is insufficient. That level of discipline is reserved for attorneys who are not aware 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; he was unaware of his ineligible status); In the Matter of Frank D. DeVito, DRB 06-116 (July 21, 2006) (attorney practiced law while ineligible, failed to cooperate with the OAE, and committed recordkeeping violations; compelling mitigating factors justified only an admonition, including the attorney's lack of knowledge of his ineligibility); In the Matter of Richard J. Cohen, DRB 04-209 (July 16, 2004) (admonition for practicing law during nineteen-month ineligibility; the attorney did not know that he was ineligible); and In the Matter of William N. Stahl, DRB 04-166 (June 22, 2004) (attorney practiced law while ineligible and failed to maintain a trust and a business account; specifically, the attorney filed a complaint on behalf of a client and made a court appearance on behalf of another client; mitigating factors

were the attorney's lack of knowledge of his ineligibility, his prompt action in correcting his ineligibility status, and the absence of self-benefit; in representing the clients, the attorney was moved by humanitarian reasons).

If the attorney is aware of his or her ineligible status, a reprimand is the usual discipline. See, e.g., In re Marzano, 195 N.J. 9 (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 Kaniper, 192 N.J. 40 (2007) (attorney practiced law during two periods of ineligibility; although the attorney's employer gave her a check for the annual attorney assessment, she negotiated the check instead of mailing it to the CPF; later, her personal check to the CPF was returned for insufficient funds; the attorney's excuses that she had not received the CPF's letters about her ineligibility were deemed improbable and viewed as an aggravating factor); In re Perrella, 179 N.J. 499 (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, the attorney practiced law in

Pennsylvania while on the inactive list; compelling mitigating factors considered); and In re Ellis, 164 N.J. 493 (2000) (one month after being reinstated from an earlier period of ineligibility, the attorney 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). But see In the Matter of Maria M. Dias, DRB 08-138 (July 29, 2008) (although attorney knew of her ineligibility, compelling mitigation warranted only an admonition; in an interview with the Office of Attorney Ethics, the attorney admitted that, while ineligible to practice law, she had appeared for other attorneys forty-eight times on a part-time, per diem basis, and in two of her own matters; the attorney was unable to afford the payment of the annual attorney assessment because of her status as a single mother of two young children).

Here, respondent knew that she had not paid the CPF assessment. She admitted that she either knew or should have known that the Court had declared her ineligible. Yet, she continued to practice law. She represented a significant number of clients (183) during her eight-month period of ineligibility. She offered no special mitigating circumstances. Therefore, an

admonition would be insufficient discipline for her transgressions.

On the other hand, discipline higher than a reprimand is not warranted. Attorneys who have exhibited more serious conduct have received reprimands. For instance, Kaniper practiced law during two periods of ineligibility and offered "improbable" excuses for not having received the CPF notices; Forman practiced law while inactive in Pennsylvania for twelve years; and Ellis had a reprimand on his disciplinary record.

In view of the foregoing, we determine that the appropriate sanction for respondent's unethical conduct is a reprimand.

Members Lolla, Boylan, 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 Maria A. Pedraza
Docket No. DRB 08-369

Argued: January 15, 2009

Decided: March 4, 2009

Disposition: Reprimand

Members	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:			5			4

Julianne K. DeCore
Chief Counsel