

SUPREME COURT OF NEW JERSEY  
Disciplinary Review Board  
Docket No. DRB 05-244  
District Docket No. VIII-04-45E

DATE FILED  
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: IN THE MATTER OF :  
: :  
: GERALD M. LYNCH :  
: :  
: AN ATTORNEY AT LAW :  
: :  
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Decision

Argued: October 21, 2005

Decided: December 1, 2005

Richard Galex appeared on behalf of the District VIII Ethics Committee.

Deborah D. Factor appeared on behalf of respondent.

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

This matter was before us on a recommendation for a reprimand filed by the District VIII Ethics Committee (DEC). The complaint charged respondent with having violated RPC 5.5(a) (unauthorized practice of law) and RPC 8.1(b) (failure to

cooperate with disciplinary authorities). At the relevant times, respondent, who was admitted to the New Jersey bar in 1977, practiced law in New Brunswick, New Jersey.

In 1999, respondent was admonished for having violated RPC 1.4(b) (failure to explain matter to client), RPC 1.15(b) (failure to safeguard property), and RPC 8.1(b) (failure to cooperate with disciplinary authorities). In the Matter of Gerald M. Lynch, Docket No. 99-105 (DRB May 28, 1999). In that case, respondent failed to reject a fee arbitration award, contrary to his client's request, and then failed to inform her of his error. Thereafter, he failed to notify his client that he had received the funds and failed to promptly deliver them to her.

On September 30, 2002, respondent was placed on the Supreme Court list of ineligible attorneys for failure to pay the 2002 annual assessment to the New Jersey Lawyers' Fund for Client Protection (CPF). On August 27, 2003, respondent purportedly paid the fees owed. However, respondent's check bounced, and, therefore, he remained on the list.

In October 2003, respondent was temporarily suspended for about a month on an unrelated issue. Although the issue was resolved, and respondent was restored in November 2003,

respondent remained on the ineligible list as a result of his failure to make good on the bounced check. On April 30, 2004, respondent finally replaced the bad check and was removed from the ineligible list that day.

In May 2005, respondent was reprimanded for having failed to cooperate with disciplinary authorities (RPC 8.1(b)). In re Lynch, 183 N.J. 260 (2005). The complaint in that matter charged respondent with a violation of RPC 5.5(a) (unauthorized practice of law) based upon his failure to make good on the bounced check used to pay his 2002 annual assessment to the CPF. Because, however, the complaint did not allege that respondent practiced law while ineligible, we dismissed that charge. The reprimand was based only on respondent's failure to cooperate with ethics authorities.

In this case, respondent admitted that he had been practicing law since September 2003, except for the time period between October and November 2003. In addition, respondent asserted that, in the late winter/early spring of 2004, the DEC presenter called him and informed him that he was ineligible to practice law for failure to remit the fees due and owing the CPF. After having confirmed with the CPF the amount that he

owed, respondent remitted to the CPF a check for \$630 on April 29, 2004. The check was presented and paid on May 19, 2004.

In light of respondent's admission to having practiced law while ineligible, the hearing proceeded solely on the issue of mitigation. At the hearing, respondent acknowledged that he had ignored the DEC investigator's telephone calls. Respondent testified that his CPF check bounced because, unbeknownst to him, the IRS had levied upon his account. He claimed that he had learned about the bounced check "after the fact." Shortly thereafter, respondent was temporarily suspended from the practice of law.

While respondent's financial difficulties were taking place, he claimed that he also was suffering from severe back pain. He had undergone four back surgeries, and he was "taking too much medication back at that time." Consequently, respondent "let things slip through the cracks that shouldn't have slipped through the cracks." At present, respondent's "books are balanced on a daily basis."

Respondent asked the DEC "to take all this into account." He also asked the DEC to consider the fact that, since 1977, he "never had a security fund problem," and he was "sure it won't happen again."

The DEC presenter took "no position" with respect to the discipline that should be imposed upon respondent.

The hearing panel report noted that respondent had admitted to violating RPC 5.5 and, therefore, the hearing proceeded "only with regard to sanctions and mitigating circumstances." The panel report made no mention of the RPC 8.1(b) charge.

The DEC found that "[a]t the times relevant hereto," respondent failed to "make payment as required to the CPF for 2003" and practiced law while on the ineligible list. However, as of the date of the hearing, respondent had paid all monies due the CPF, which resulted in both the removal of his name from the ineligible list and his reinstatement to the practice of law.

The DEC further found that respondent had "presented evidence of health and personal problems that drew his attention away from the day-to-day administrative responsibilities of running and managing his office." The DEC did not detail the "problems" or how they diverted respondent's attention from his responsibilities.

The DEC observed that, in the absence of an ethics history, an admonition ordinarily would be imposed. In this case, respondent already had been admonished for failure to cooperate

with disciplinary authorities and reprimanded for "a situation similar to the case in point." Thus, the DEC recommended that respondent be reprimanded for his violation of RPC 5.5.

Following a de novo review of the record, we are satisfied that the DEC's conclusion that respondent violated RPC 5.5 is supported by clear and convincing evidence. However, before we turn to the DEC's conclusion that respondent engaged in the unauthorized practice of law, we first address the charge that respondent failed to cooperate with disciplinary authorities. Significantly, the complaint's allegations offered no factual support for the claim that respondent had violated RPC 8.1(b). Moreover, the charge seemed to have been abandoned as of the DEC hearing. On the other hand, during respondent's testimony, he volunteered that he had ignored the DEC investigator's telephone calls. Even if an attorney does not cooperate with disciplinary authorities while they investigate a grievance, however, we do not ordinarily conclude that the attorney has violated RPC 8.1(b) if the attorney files an answer to the complaint and appears for the hearing. Here, respondent filed an answer to the complaint, and he appeared at the ethics hearing. Therefore, we determine to dismiss the RPC 8.1(b) charge.

With respect to the unauthorized-practice-of-law charge, the DEC correctly determined that respondent violated RPC 5.5(a), which prohibits an attorney from "practic[ing] law in a jurisdiction where doing so violates the regulation of the legal profession in that jurisdiction." Respondent so admitted. Thus, we adopt the DEC's conclusion that respondent violated RPC 5.5(a).

Generally, an admonition is imposed upon an attorney who practices law while ineligible, particularly in cases where the attorney was unaware of the ineligibility. In the Matter of Richard J. Cohen, DRB 04-209 (July 16, 2004) (admonition for practicing law during nineteen-month ineligibility); In the Matter of William N. Stahl, DRB 04-166 (June 22, 2004) (admonition for practicing law while ineligible and failing to maintain a trust and a business account; 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 the Matter of Samuel Fishman, DRB 04-142 (June 22, 2004) (admonition for attorney who, 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 In re Perrella, 179 N.J. 99 (2004) (attorney reprimanded for advising his client that he was on the inactive list and then practicing 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) (reprimand for attorney who, for a period of twelve years, practiced law in Pennsylvania while on the inactive list; compelling mitigating factors considered); In re Lucid, 174 N.J. 367 (2002) (reprimand for practicing 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); In re Hess, 174 N.J. 346 (2002) (reprimand, in a default matter, for practicing law while ineligible and failing to cooperate with disciplinary authorities; the attorney had received an admonition for practicing law while ineligible and failing to maintain a bona fide office in New Jersey); In re Ellis, 164 N.J. 493 (2000) (reprimand for attorney who, one month after being reinstated from an earlier period of ineligibility, 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; an aggravating factor was the attorney's lack of candor to us about other attorneys' use of his name on complaints and letters and about the signing of his name in error). But see In re Schwartz, 163 N.J. 501 (2000) (three-month suspension for attorney who, for a seven-year period, knowing that she was ineligible to practice law, handled approximately ten New Jersey matters; the attorney also failed to maintain a bona fide office).

In this case, respondent's ethics history alone, which includes an admonition and a reprimand, would require the imposition of a reprimand. However, a reprimand also would be appropriate because respondent was undoubtedly aware that he was ineligible to practice during the time period in question. Respondent testified that he learned about the bounced check "after the fact." Because, however, he previously had been on the ineligible list for failure to pay the fees owed the CPF, it would have been unreasonable for him to expect that the bounced check would not result in another period of ineligibility. More importantly, respondent's testimony focused solely on his failure to replace the bounced check, not his knowledge of his ineligibility to practice law.

In light of respondent's failure to establish that he was unaware of his ineligibility, we conclude that he knowingly practiced law while ineligible. We do not accept the factors that respondent would have us consider as mitigation. Therefore, we determine that respondent should receive a reprimand.

Members Holmes and Pashman voted to impose a censure. Members Boylan and Neuwirth did not participate.

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

Disciplinary Review Board  
Mary J. Maudsley, Chair

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

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

In the Matter of Gerald M. Lynch  
Docket No. DRB 05-244

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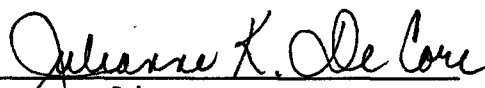
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Argued: October 20, 2005

Decided: December 1, 2005

Disposition: Reprimand

Members	Suspension	Reprimand	Censure	Disqualified	Did not participate
Maudsley		X			
O'Shaughnessy		X			
Boylan					X
Holmes			X		
Lolla		X			
Neuwirth					X
Pashman			X		
Stanton		X			
Wissinger		X			
<b>Total:</b>		5	2		2

  
Julianne K. DeCore  
Chief Counsel