Supreme Court of New Jersey
Disciplinary Review Board
Docket No. DRB 18-190
District Docket No. XIII-2017-0004E

In The Matter Of	:
Robert J. Bernot	:
An Attorney At Law	:

Decision

Decided: November 28, 2018

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

This matter was before us on a certification of the record filed by the District XIII Ethics Committee (DEC), pursuant to R. 1:20-4(f). The formal ethics complaint charged respondent with violating RPC 5.5(a)(1) (engaging in the unauthorized practice of law).

For the reasons set forth below, we determine to impose a six-month consecutive suspension.

Respondent was admitted to the New Jersey bar in 1982.

On May 2, 2012, respondent received a reprimand for violating RPC 1.3 (lack of diligence). In re Bernot, 210 N.J. 117 (2012). On May 3, 2013, he was temporarily suspended by the Court, for failing to pay disciplinary costs assessed in his reprimand matter. In re Bernot, 213 N.J. 541 (2013). On October 4, 2013, respondent was reinstated, having paid in full the monies owed. In re Bernot, 215 N.J. 634 (2013).

On November 2, 2018, respondent received a two-year suspension, for engaging in the unauthorized practice of law and failing to cooperate with disciplinary authorities. In violation of two Court Orders, respondent practiced law both while temporarily suspended for failure to pay costs and while ineligible for failure to comply with the Court's mandatory IOLTA program. That matter proceeded by way of default. In the Matter of Robert J. Bernot, DRB 17-339 (April 3, 2018) (slip op. at 7).

Specifically, between August 29 and September 16, 2013, respondent sent six letters on behalf of his client to her former husband regarding compliance with a property settlement agreement. Each of these letters was faxed from his law office, using his office stationery, which identified him as an attorney in good standing, a violation of RPC 5.5(a)(1). Id.

Additionally, despite repeatedly accepting and signing for letters from the Office of Attorney Ethics requesting that he reply to the grievance, respondent failed to do so. Subsequently, the Office of Attorney Ethics filed a disciplinary complaint. Despite receiving a second opportunity to cooperate, respondent again ignored the requests. We found that his conduct in this regard brazenly violated RPC 8.1(b). Id.

On October 22, 2012, respondent was deemed administratively ineligible to practice law, pursuant to R. 1:28A-2(d), for failure to comply with the Court's mandatory Interest on Lawyer Trust Account (IOLTA) program.

On November 17, 2014, the Court declared him ineligible to practice law, for failure to satisfy his Continuing Legal Education (CLE) requirements. He remains ineligible.

Additionally, since September 12, 2016, respondent has been ineligible to practice law for failure to pay the annual attorney assessment to the New Jersey Lawyers' Fund for Client Protection (the Fund).

Service of process was proper in this matter. On November 30, 2017, the DEC mailed a copy of the complaint to respondent at his business address in Flemington, New Jersey, by regular and certified mail, return receipt requested,

in accordance with R. 1:20-4(d) and 1:20-7(h). The regular mail was not returned. The certified mail was returned marked unclaimed.

On February 22, 2018, the DEC sent respondent a letter, to the same address, informing him that, if he failed to file a verified answer to the complaint within five days of the date of the letter, the allegations of the complaint would be deemed admitted, the entire record would be certified directly to us for the imposition of discipline, and the complaint would be deemed amended to include a violation of RPC 8.1(b). The regular mail was not returned. On February 27, 2018, respondent signed for the certified mail at his place of business.

The time within which respondent may have answered has expired. As of the date of the certification of the record, no answer had been filed by or on behalf of respondent.

We now turn to the allegations of the complaint.

Respondent has been "administratively ineligible" to practice law since November 17, 2014 for failure to meet the Court's CLE requirements.[1] Additionally, he has been "administratively ineligible" to practice law since September 12, 2016, for failure to pay his annual assessment to the Fund.[2]

Between June 1, 2014 and February 17, 2015, respondent performed legal services on behalf of Eric Hineline, in connection with a tax-lien foreclosure action filed against Hineline by the Borough of Flemington, Hunterdon County, New Jersey (the Borough).

Specifically, in April 2014, the Borough filed a tax-lien foreclosure action against Hineline. On June 1, 2014, respondent, on behalf of Hineline, wrote a letter to the Clerk of the Superior Court of New Jersey, Foreclosure Unit, in which he stated, among other things, "Please consider this letter as an ANSWER and not proceed via the default process...." In the June 1, 2014 letter, respondent

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[1] The complaint erroneously alleged that respondent had been ineligible, on that basis, since 2011.

[2] Here, too, the complaint erroneously identifies the date of this specific ineligibility as November 17, 2014.

held himself out as the attorney representing Hineline in defense of the tax-lien foreclosure.[3]

On October 7, 2014, respondent sent a letter, on his attorney letterhead to Robert A. Ballard, Jr., Esq., the Borough's attorney, once again holding himself out as the attorney for Hineline in connection with the foreclosure action. Similarly, on October 14 and 20, 2014, using his attorney letterhead, respondent wrote letters to Ballard, again holding himself out as the attorney for Hineline.

In addition, on October 16, 2014, respondent hand wrote a note to Hineline, attaching a copy of a deficiency notice from the Foreclosure Unit, indicating that the respondent's "Answer" was deficient for failure to file a Foreclosure Case Information Statement. Hence, also on October 20, 2014, and again, using his attorney letterhead, respondent sent a letter to the Foreclosure Unit, seeking to vacate the default against Hineline and his wife.

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[3] Although respondent had not been declared administratively ineligible at this time, based on his CLE non-compliance, he had been declared ineligible since October 22, 2012, based on his failure to comply with IOLTA requirements. Indeed, respondent's recent two-year suspension was based on his continued practice following his IOLTA ineligibility. Thus, we take judicial notice of his ineligible status as of June 1, 2014, the date of his first letter to the Superior Court Clerk, Foreclosure Unit.

By letter dated February 17, 2015,[4] respondent, still using his attorney letterhead, sent Kirsten B. Ennis, Esq., Hineline's bankruptcy attorney, information to be used at Hineline's bankruptcy meeting in federal court the following day.

Following a review of the record, we find that the facts recited in the complaint support the charges of unethical conduct. Respondent's failure to file an answer is deemed an admission that the allegations of the complaint are true and that they provide a sufficient basis for the imposition of discipline. R. 1:20-4(f)(1).

Specifically, between June 1, 2014 and February 17, 2015, respondent performed legal services in behalf of Hineline, in connection with a tax-lien foreclosure action. As we previously noted, on June 1, 2014, when he began providing legal services, respondent was still administratively ineligible to practice law for failure to comply with the Court's mandatory IOLTA program. During the course of the representation, on November 17, 2014, respondent also became ineligible to practice for failure to satisfy his CLE requirements. By

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[4] By this date, respondent also had been administratively ineligible based on his CLE non-compliance.

providing legal services to Hineline while administratively ineligible to do so, respondent violated RPC 5.5(a)(1).

Ordinarily, when an attorney practices while ineligible, an admonition will be imposed if the attorney is unaware of the ineligibility or advances compelling mitigating factors. See, e.g., In the Matter of Jonathan A. Goodman, DRB 16-436 (March 22, 2017) (attorney practiced law during two periods of ineligibility; he was unaware of his ineligibility) and In the Matter of James David Lloyd, DRB 14-087 (June 25, 2014) (during an approximate thirteen-month period of ineligibility, attorney handled three client matters; mitigating factors considered were that the attorney was changing careers to become a youth minister at the time; that he inadvertently failed to pay the assessment; that the services performed in the three client matters were for friends or acquaintances; that he quickly cured the ineligibility upon learning of it; and that he had no prior discipline in his eighteen-year legal career).

A reprimand is usually imposed for practicing law while ineligible, when the attorney allows the matter to proceed by default, has an extensive ethics history, is aware of the ineligibility and practices law nevertheless, has committed other ethics improprieties, or has been disciplined for conduct of the same sort. See, e.g., In re Frayne, 220 N.J. 23 (2014) (default; attorney practiced

law while ineligible; there was no evidence that he knew that he was ineligible at the time; the attorney also failed to communicate with the client); In re Fell, 219 N.J. 425 (2014) (attorney who was ineligible for a five-month period represented a matrimonial client, knowing of his ineligibility; in aggravation, the attorney had received a prior reprimand; in mitigation, the attorney readily admitted his conduct and served his community); In re Moskowitz, 215 N.J. 636 (2013) (attorney practiced law, knowing that he was ineligible to do so); In re Jay, 210 N.J. 214 (2012) (attorney was aware of ineligibility and practiced law anyway; prior three-month suspension for possession of cocaine and marijuana); and In re Payton, 207 N.J. 31 (2011) (attorney knew of her ineligibility, and had been admonished for the same infraction in 2005).

Here, in respondent's previous matter, we recommended, and the Court imposed, a two-year suspension for his practice while temporarily suspended and while administratively ineligible, between August 29 and September 16, 2013. That matter, too, was before us by way of default. In the Matter of Robert J. Bernot, DRB 17-339 (April 3, 2018) (slip op. at 7). Based on the record in that matter, respondent was aware of his having practiced while temporarily suspended and administratively ineligible, at a minimum, on February 18, 2014, when he signed for certified mail, from the investigator, notifying him of the

docketing of the matter. Id. at 5. Therefore, in the matter now before us, when he provided legal services for Hineline, respondent was aware of his ineligibility to do so.

Respondent's knowledge sets the baseline discipline for his misconduct at a reprimand. What significantly aggravates his misconduct, as it did in respondent's last matter, is his flagrant disregard for the disciplinary system. He personally signed for certified letters and simply chose to ignore those demands for information. In the previous matter, we characterized respondent's conduct in this regard as brazen. It is only more so now.

Moreover, respondent has allowed this matter to proceed by way of default, requiring enhanced discipline. See, In re Kivler, 193 N.J. 332, 342 (2008) ("a respondent's default or failure to cooperate with the investigative authorities operates as an aggravating factor, which is sufficient to permit a penalty that would otherwise be appropriate to be further enhanced."). This, coupled with his ethics history, justifies a six-month suspension.

The misconduct here occurred almost nine months after the misconduct in respondent's previous matter had concluded. Therefore, we determine that the discipline here should be treated separately from the two-year suspension

recently imposed by the Court. Thus, we determine that the six-month suspension be imposed consecutively to that suspension.

Member Gallipoli voted to recommend respondent's disbarment. Member Hoberman 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
Bonnie C. Frost, Chair

By: Ellen A. Brodsky
Ellen A. Brodsky

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

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Disposition: Six-Month Suspension

Members	Six-Month Suspension	Disbar	Recused	Did Not Participate
Frost	X			
Clark	X			
Boyer	X			
Gallipoli		X		
Hoberman				X
Joseph	X			
Rivera	X			
Singer	X			
Zmirich	X			
Total:	7	1	0	1

Ellen A. Brodsky
Chief Counsel