SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 10-441
District Docket No. XIV-2010-0026E

IN THE MATTER OF	:
QUEEN E. PAYTON	:
AN ATTORNEY AT LAW	:

Decision

Argued: March 17, 2011

Decided: June 14, 2011

Lee A. Gronikowski appeared on behalf of the Office of Attorney Ethics.

Respondent waived appearance for oral argument.

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

This matter was before us on a disciplinary stipulation between respondent and the Office of Attorney Ethics (OAE). Respondent stipulated that she practiced law while ineligible to do so for failure to pay the 2010 annual attorney assessment to the New Jersey Lawyers' Fund for Client Protection (CPF). The OAE recommended a reprimand. We agree with that recommendation.

Respondent was admitted to the New Jersey bar in 2001. On November 3, 2005, she received an admonition for practicing law while ineligible and for failing to cooperate with the ethics

investigation. In the Matter of Queen E. Payton, DRB 05-250 (November 3, 2005).

Respondent has been on the ineligible list of attorneys three times, including from September 28, 2009 through August 18, 2010.

Respondent and the OAE entered into a December 6, 2010 disciplinary stipulation, in which respondent admitted having practiced law during her 2009-2010 period of ineligibility. During an OAE demand audit, conducted on August 19, 2010, respondent explained to the OAE that, due to the hospitalization of her husband, Ben W. Payton (the respondent in DRB 10-436, a companion case arising out of identical conduct), she was in dire financial straits and, therefore, unable to pay the CPF annual assessment. Respondent stipulated that she was aware of her ineligibility.

In aggravation, the stipulation cites respondent's prior admonition for the same conduct and her knowledge of her ineligibility. In mitigation, the stipulation indicates that respondent was struggling financially at the time.[1]

Although the stipulation factually establishes respondent's misconduct, it does not identify the RPC that she violated. If

[1] Although the parties cited respondent's cooperation as an additional mitigating factor, it is not, because respondent is required by the rules to cooperate with the discipline system.

there were some ambiguity about which rule applies, it could constitute grounds for rejection of the stipulation, in its present form. Here, however, there is no ambiguity about the RPC inadvertently omitted from the stipulation. Indeed, only one RPC is implicated when an attorney practices law while ineligible for failure to pay the CPF annual attorney assessment, that is, RPC 5.5(a) (engaging in the unauthorized practice of law). Additionally, the cases cited by the parties are all RPC 5.5(a) cases in which the attorneys practiced law while ineligible.

Respondent stipulated that, from September 28, 2009 to August 18, 2010, after she was placed on the CPF list of ineligible attorneys, she continued to practice law. She conceded that she knew, at the time, that she was ineligible to practice law.

In aggravation, we considered that respondent has a prior 2005 admonition for identical misconduct and that, in the present matter, she was aware of her ineligibility. In mitigation, we took into account that she was struggling financially at the time.

A reprimand is usually imposed for practicing law while ineligible, when the attorney either has an extensive ethics history, or is aware of the ineligibility and practices law

nevertheless, or has committed other ethics improprieties, or has been disciplined for conduct of the same sort. See, e.g., In re Austin, 198 N.J. 599 (2009) (during one-year period of ineligibility attorney made three court appearances on behalf of an attorney-friend who was not admitted in New Jersey, receiving a $500 fee for each of the three matters; the attorney knew that he was ineligible; also, the attorney did not keep a trust and a business account in New Jersey and misrepresented, on his annual registration form, that he did so; several mitigating factors considered, including the attorney's unblemished disciplinary record); In re Marzano, 195 N.J. 9 (2008) (motion for reciprocal discipline, following attorney's nine-month suspension in Pennsylvania; the attorney represented three clients after she was placed on inactive status in Pennsylvania; she was aware of her ineligibility); In re Davis, 194 N.J. 555 (2007) (motion for reciprocal discipline; attorney represented a client in Pennsylvania when the attorney was ineligible to practice law in that jurisdiction as a non-resident active attorney and later as an inactive attorney; the attorney also misrepresented his status to the court, to his adversary, and to disciplinary authorities; the attorney was suspended for one year and a day in Pennsylvania; extensive mitigation considered); 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 Coleman, 185 N.J. 336 (2005) (motion for reciprocal discipline after attorney's two-year suspension in Pennsylvania; while on inactive status in Pennsylvania, the attorney practiced law for nine years, signing hundreds of pleadings and receiving in excess of $7,000 for those services); In re Perrella, 179 N.J. 499 (2004) (attorney advised his client that he was on the Pennsylvania 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; he was suspended for one year and a day in Pennsylvania; 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: two private reprimands and a reprimand); In re Hess, 174 N.J. 346 (2002) (attorney practiced

law while ineligible and failed 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); 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 OAE, 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).

This matter is similar to Hess (prior admonition for misconduct that included practicing law while ineligible) and Perrella (the attorney knew of the ineligibility and practiced law anyway). It is more serious than Dias (admonition), who also pleaded for mitigation

due to her poor financial condition, because Dias had no history of similar misconduct.

As seen from the above-cited cases, respondent's prior admonition for the same conduct and her knowledge of her ineligibility call for a reprimand. We do not believe that the mitigating factors (her husband's illness and their poor finances) outweigh the aggravating factors. Respondent has been down this road before. She knew that she could not ignore the CPF without consequence, but did so anyway. We, therefore, determine that the appropriate level of discipline for this respondent is a reprimand.

Member Doremus 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 Queen W. Payton
Docket No. DRB 10-441

Argued: March 17, 2011

Decided: June 14, 2011

Disposition: Censure

Members	Disbar	Suspension	Reprimand	Dismiss	Disqualified	Did not participate
Pashman			X			
Frost			X			
Baugh			X			
Clark			X			
Doremus						X
Stanton			X			
Wissinger			X			
Yamner			X			
Zmirich			X			
Total:			8			1

Julianne K. DeCore
Julianne K. DeCore
Chief Counsel