

DISCIPLINARY REVIEW BOARD

OF THE

SUPREME COURT OF NEW JERSEY

BONNIE C. FROST, ESQ. CHAIR
EDNA Y. BAUGH, ESQ. VICE-CHAIR
BRUCE W. CLARK, ESQ.
JEANNE DOREMUS
HON. MAURICE J. GALLIPOLI
MORRIS YAMNER, ESQ.
ROBERT C. ZMIRICH



RICHARD J. HUGHES JUSTICE COMPLEX
P.O. BOX 962
TRENTON, NEW JERSEY 08625-0962
(609) 292-1011

JULIANNE K. DeCORE
CHIEF COUNSEL

ISABEL FRANK
DEPUTY CHIEF COUNSEL

ELLEN A. BRODSKY
FIRST ASSISTANT COUNSEL

LILLIAN LEWIN
DONA S. SEROTA -TESCHNER
COLIN T. TAMS
KATHRYN ANNE WINTERLE
ASSISTANT COUNSEL

April 22, 2013

Mark Neary, Clerk
Supreme Court of New Jersey
P.O. Box 970
Trenton, New Jersey 08625

Re: In the Matter of Paul Franklin Clausen
Docket No. DRB 13-010
District Docket No. XIII-2011-0009E

Dear Mr. Neary:

The Disciplinary Review Board has reviewed the motion for discipline by consent (reprimand or such lesser discipline as the Board shall deem warranted), filed by the District XIII Ethics Committee (DEC), pursuant to R. 1:20-10(b)(1). Following a review of the record, the Board determined to grant the motion. In the Board's view, a reprimand is the appropriate discipline for respondent's practicing while ineligible, a violation of RPC 5.5(a).

Specifically, from September 28, 2009 to January 31, 2011, respondent was on the Supreme Court's list of ineligible attorneys due to nonpayment of the annual attorney assessment to the New Jersey Lawyers' Fund for Client Protection (CPF). During this time, he continued to practice law. He also failed to "timely file" the IOLTA registration form.

On January 31, 2011, while respondent remained on the ineligible list, he appeared before Superior Court Judge Paul A. Kapalko, who confronted him with his ineligible status. Respondent "immediately" contacted the CPF, traveled to Trenton, paid all

amounts due, and was reinstated. He also remedied his IOLTA deficiencies and is currently in good standing.

Although the CPF had mailed late notices and copies of the orders of ineligibility to respondent at his home address, which was the address that he had designated for receipt of billings from the CPF, respondent surmised that the documents "must have been lost in a pile of mail," but acknowledged that this did not excuse either his failure to comply with his payment obligations to the CPF or his practicing while ineligible. He also acknowledged that, in the past, he had made late payments to the CPF.

Respondent has since implemented safeguards within his office so that this does not happen again. In addition, he has changed his billing address to his office address with both the CPF and IOLTA.

In mitigation, the parties stipulated to respondent's immediate correction of his ineligible status, once it was brought to his attention by Judge Kapalko and his lack of disciplinary history.

Ordinarily, when an attorney practices while ineligible, an admonition will be imposed, if he or she is unaware of the ineligibility or advances compelling mitigating factors. See, e.g., In the Matter of Maria M. Dias, DRB 08-138 (July 29, 2008) (although attorney knew of her ineligibility, she was unable to afford the payment of the annual attorney assessment because of her status as a single mother of two young children); In the Matter of William C. Brummel, DRB 06-031 (March 21, 2006) (attorney practiced law during a four-month period of ineligibility; the attorney 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); and 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 he was ineligible).

A reprimand is usually imposed 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 the Matter of Queen E. Payton, DRB 10-441 (June 14, 2011) (reprimand imposed on attorney who knew of her ineligibility and who had been admonished for the same infraction in 2005); 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); and 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).

Here, respondent was unaware of his ineligibility. However, he acknowledged that this was the result of carelessness on his part, that it did not excuse either his failure to comply with his payment obligations to the CPF or his continuing to practice while ineligible, and that he had made late payments in the past.

Under the circumstances, the Board determined that respondent was, at a minimum, constructively aware of his ineligible status. As a licensed New Jersey attorney, respondent knew that annual payments were required to maintain that license and he had to know that he had not made those payments. As a sole practitioner, respondent was the person responsible for the payment of the CPF fee, which he admittedly failed to do in a timely manner in the past. He is not associated with a New Jersey law firm and, therefore, could not claim to have reasonably relied upon someone else to have made the CPF payments on behalf of all lawyers.

For these reasons, a reprimand is the appropriate measure of discipline for respondent's violation of RPC 5.5(a).

Enclosed are the following documents:

1. Notice of motion for discipline by consent, dated December 5, 2012;

April 22, 2013

Page 4 of 4

2. Stipulation of discipline by consent, dated December 21, 2012;
3. Affidavit of consent, dated December 4, 2012;
4. Ethics history, dated April 22, 2013.

Very truly yours,



Julianne K. DeCore
Chief Counsel

JDK:paa

cc: Bonnie Frost, Chair, Disciplinary Review Board
(w/o encls.)
Charles Centinaro, Director, Office of Attorney Ethics
(w/o encls.)
John E. Lanza, Chair, District XIII Ethics Committee
(w/o encls.)
Donna P. Legband, Secretary, District XIII Ethics Committee
(w/o encls.)
Paul Franklin Clausen, Respondent (w/o encls.)