

SUPREME COURT OF NEW JERSEY  
Disciplinary Review Board  
Docket No. DRB 13-044  
District Docket No. XB-2010-0024E  
and XB-2011-0005E

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IN THE MATTER OF :  
CHRISTOPHER WEST HYDE :  
AN ATTORNEY AT LAW :  
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Decision

Argued: June 20, 2013

Decided: August 13, 2013

Catherine F. Riordan appeared for the District XB Ethics Committee (Docket No. XB-2010-0024E).

Helen E. Tuttle appeared for the District XB Ethics Committee (Docket No. XB-2011-0005E).

Respondent waived appearance for oral argument.

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

This matter was before us on a recommendation for discipline (reprimand) filed by the District XB Ethics Committee (DEC). Two separate complaints alleged that respondent violated RPC 5.5(a)(1), when he practiced law while on the

"administrative inactive list for failure to file an IOLTA registration statement as required by R. 1:28A-2(d)." We determine to impose a censure.

Respondent was admitted to the New Jersey bar in 1987.<sup>1</sup> On July 24, 2008, he received an admonition for practicing law, from September 2005 to June 2006, while on the New Jersey Lawyers' Fund for Client Protection (CPF) list of ineligible attorneys for failure to pay the annual attorney assessment. At the time, we considered, in aggravation, respondent's three prior periods of ineligibility: September 24, 2001 to October 10, 2001; September 30, 2002 to March 3, 2003; and September 27, 2004 to October 19, 2004. Respondent attributed his problems to mix-ups in the postal system. In mitigation, we considered that respondent had no prior discipline, that he was not aware of his ineligibility, that he cured it as soon as he became aware of it, and that he took steps to rent a post office box in order to

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<sup>1</sup> At the DEC hearing, respondent stated that he is also admitted to practice law in New York and Pennsylvania. He provided no years of admission.

prevent any future reoccurrence of the postal problem. In the Matter of Christopher West Hyde, DRB 08-137 (July 24, 2008).

On June 28, 2010, respondent was temporarily suspended for failure to pay costs assessed in connection with his admonition matter. In re Hyde, 202 N.J. 429 (2010). He was reinstated on August 9, 2010. In re Hyde, 203 N.J. 156 (2010).

At the inception of the DEC hearing in this matter, respondent admitted the essential factual allegations contained in the two complaints against him.

**I. DOCKET NO. XB-2010-0024E**

From November 5, 2008 to October 26, 2009, respondent practiced law while ineligible to do so for failure to comply with IOLTA's annual registration requirements for 2008.

According to the complaint, on June 14, 2011, respondent admitted that he had not satisfied the IOLTA requirements until December 9, 2010, despite having been on notice of his ineligibility since at least August 2010. Respondent also admitted that he had continued to practice law while ineligible.

Specifically, during his period of ineligibility, respondent communicated with a court "under a cover indicating

that he [was] a practicing attorney during the time of ineligibility."

**II. DOCKET NO. XB-2011-0005E**

From October 9, 2009 through December 9, 2010, respondent was ineligible to practice law, due to his failure to comply with IOLTA requirements. Respondent admitted that, during this period of ineligibility, he attempted to make an appearance in Morris County Superior Court, Chancery Division, before the Honorable Deanne M. Wilson, J.S.C.

In opposition to a motion to disqualify him as counsel, respondent argued that he was in compliance with the CPF, but failed to address the issue of IOLTA ineligibility. After a colloquy with the judge, respondent stated that the issue of IOLTA compliance had not "crystallize[d] in his mind" until just then. Respondent had been aware of the mechanisms of IOLTA ineligibility, having previously been ineligible to practice law for IOLTA noncompliance. On the same day of his court appearance, December 9, 2010, respondent became compliant with IOLTA.

Respondent conceded that he had been placed on IOLTA's list of ineligible attorneys on three occasions: November 5, 2008; October 26, 2009; and November 1, 2010.

Respondent offered mitigation for his actions. He testified that, after his admonition for identical misconduct, he purchased a post office box, in order to eliminate problems with his mail. However, a new problem arose with the mail, contained in the post office box, itself. Respondent claimed that his ex-wife "shall we say accessed the post office box," presumably absconding with his correspondence from IOLTA, during the very period of time in question here. Thus, until his appearance before Judge Wilson, in late 2010, he had no notice that IOLTA had again placed him on the list of ineligible attorneys. Respondent continued:

The bear [sic] facts are that there was an ineligibility list, I didn't get it because I don't get the Law Journal and I don't have a great deal of interaction in the courts and didn't at the time but that as soon as I did learn of it, I rectified it and it is, of course, you know, my pie in the face that I didn't understand that there was a difference between IOLTA and Client Security Fund at the time that this matter arose. If I had, it would have been resolved immediately. I unfortunately I used [sic] to work in a big firm where things like that were taken care of for me and as a solo practitioner, I admit my failings in not

taking care of it better myself. I thought that having a post office box would assure my receipt of mail but I wasn't prepared for the vagaries of a divorce process and all I can say is that as I found out about matters they had been resolved completely. I'm now back -- will be starting full-time practice of law again shortly. I've been doing per diem work but -- and in a firm which will, again, have the ability to have people handling these things and tracking them for me so I don't expect that it's going to be a problem in the future . . . .

[T34-20 to T35-21.]<sup>2</sup>

Hearing panel member Susan Reed questioned respondent about his statement:

MS. REED: You indicated earlier that you are going to be moving to a larger law firm.

MR. HYDE: Yes.

MS. REED: And there will be staff or people there to track the IOLTA paperwork and forms.

MR. HYDE: Yes, ma'am.

MS. REED: Don't you think you have any personal responsibility to do that on your own?

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<sup>2</sup> "T" refers to the transcript of the December 3, 2012 DEC hearing.

MR. HYDE: Of course, but it's also nice to have a second set of eyes on it and, you know, having somebody whose job it is to track things annually and input them into a computer.

[T42-15 to T43-4.]

As seen below, respondent's answers to the formal ethics complaints urged consideration of other mitigation.

The DEC found respondent guilty of the admitted violations contained in the complaints. It considered his misconduct as one seamless infraction, albeit spread out over two separate complaints. In fact, the parties agreed, at the DEC hearing, that the respondent's practice of law while on the IOLTA list of ineligible attorneys would be considered as a single violation of RPC 5.5(a)(1).

In mitigation, the DEC considered the following factors: respondent was forthcoming and cooperative with ethics authorities; he immediately came into compliance, after the attempted appearance before Judge Wilson; he did not subscribe to the New Jersey Law Journal; and problems with his mail persisted.

Additional factors contained in his answers were also considered in mitigation, although the DEC did not explain why

they constituted mitigation. First, respondent claimed that his former wife was responsible for his law office management and had disregarded his IOLTA notices. Second, respondent demonstrated that he was ineligible on September 30, 2002 and reinstated on March 3, 2003; that he was ineligible as of September 26, 2005 and reinstated as of June 9, 2006; and that he was on the IOLTA ineligible list as of November 1, 2010 and reinstated on December 9, 2010, immediately after coming before Judge Wilson.

The DEC considered the following aggravating factors: respondent had been placed on IOLTA's list of ineligible attorneys on three occasions: November 5, 2008, October 26, 2009, and November 1, 2010; he was admonished in 2008, for violating RPC 5.5(a) by continuing to practice law from September 2005 to June 2006, while on the CPF list of ineligible attorneys; IOLTA had notified respondent of his ineligibility to practice law prior to his attempted appearance before Judge Wilson; his name appeared on the October 29, 2007 "Notice to the Bar" Ineligible List; his name appeared on the IOLTA Ineligible List on October 30, 2006; and his name appeared in the New Jersey Lawyer, on October 15, 2001, on the list of New Jersey attorneys failing to comply with the IOLTA requirements.



The DEC recommended a reprimand, with two conditions: that he furnish this Board with copies of his completed and submitted IOLTA registration forms for two years and that he "immediately update his current mailing address with the U.S. Post Office" and notify this Board of any address changes for the next two years. The DEC did not support its recommendation for a reprimand with case law.

Following a de novo review of the record, we are satisfied that the DEC's finding that respondent's conduct was unethical is fully supported by clear and convincing evidence.

Respondent stipulated that he failed to comply with the IOLTA registration requirements from November 5, 2008 through December 9, 2010. During that time, three orders listed him as ineligible, one in 2008, one in 2009 and one in 2010.

Respondent also stipulated that, during this period of ineligibility, he continued to practice law. He claimed that he was unaware that he was ineligible, primarily because he had trouble receiving notices at his various addresses, due to post office issues. It was not until he appeared before Judge Wilson, in a civil matter on December 9, 2010, that he learned of his ineligibility. He immediately completed the registration process that day and was brought into compliance by the end of that day.

Respondent stipulated that his conduct violated RPC 5.5(a)(1) and R. 1:28A-2(d).

Practicing law while ineligible, without more, is generally met with an admonition, if the attorney is either unaware of the ineligibility or advances compelling mitigating factors. See, e.g., In the Matter of Robert B. Blackman, DRB 10-137 (June 18, 2010) (attorney practiced law while ineligible for failure to file the annual IOLTA registration statement for three years; the attorney did not know that he was ineligible); In the Matter of Matthew George Connolly, DRB 08-419 (March 31, 2009) (attorney ineligible to practice law rendered legal services; the attorney's conduct was unintentional); 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 William C. Brummell, DRB 06-031 (March 21, 2006) (attorney practiced law during a four-month period of ineligibility; the attorney was unaware of his ineligible status); and In the Matter of Richard J. Cohen, DRB 04-209 (July 16, 2004) (attorney

practiced law during nineteen-month ineligibility; the attorney did not know that he was ineligible).

Where the attorney has prior discipline, reprimands have been imposed. See, e.g., In re Jay, 210 N.J. 214 (2012) (attorney was aware of ineligibility and practiced law nevertheless; prior three-month suspension for possession of cocaine and marijuana) and In re (Queen) Payton, 207 N.J. 31 (2011) (attorney practiced law during period of ineligibility, fully aware of her ineligibility; prior admonition for the same violation).

Here, as in Jay and Payton, respondent has prior discipline: a 2008 admonition for practicing law while on the CPF list of ineligible attorneys, misconduct that is virtually identical to practicing law while on the IOLTA list of ineligible attorneys. His proffered mitigation is easily negated by his significant history of IOLTA and CPF deficiencies. That history of non-compliance makes it difficult for us to accept that things did not "crystallize in his mind" until December 9, 2010.


Considering only respondent's prior discipline, precedent would call for a reprimand. The additional aggravating factor of respondent's well-established pattern of overlooking his

obligations to IOLTA and the CPF, however, warrants enhanced discipline -- a censure.

Chair Frost and Member Clark voted to impose 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  
Bonnie C. Frost, Chair

By:   
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Julianne K. DeCore  
for Chief Counsel

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SUPREME COURT OF NEW JERSEY  
DISCIPLINARY REVIEW BOARD  
VOTING RECORD

In the Matter of Christopher West Hyde  
Docket No. DRB 13-044

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Argued: June 20, 2013

Decided: August 13, 2013

Disposition: Censure

Members	Disbar	Suspension	Censure	Reprimand	Disqualified	Did not participate
Frost				X		
Baugh			X			
Clark				X		
Doremus						X
Gallipoli			X			
Yamner			X			
Zmirich			X			
Total:			4	2		1

  
Julianne K. DeCore  
Chief Counsel