

# DISCIPLINARY REVIEW BOARD

## OF THE SUPREME COURT OF NEW JERSEY

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September 26, 2013

Mark Neary, Clerk  
Supreme Court of New Jersey  
P.O. Box 970  
Trenton, New Jersey 08625-0962

Re: In the Matter of Howard D. Moskowitz  
Docket No. DRB 13-118  
District Docket No. XII-2012-0028E

Dear Mr. Neary:

The Disciplinary Review Board has reviewed the motion for discipline by consent (reprimand or such lesser discipline as the Board may deem warranted) filed by the District XII Ethics Committee, pursuant to R. 1:20-10(b). 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 October 21, 2011 to June 1, 2012, 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.

On May 4, 2012, while respondent remained on the ineligible list, he appeared for trial before the Honorable Edward T. O'Connor, Jr., J.S.C., in Hudson County, on behalf of a third-

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party defendant, the executor of an estate. On the same day, respondent filed a Verified Complaint for Judgment of Insolvency and submitted a proposed Order to Show Cause to the Surrogate of Hudson County. On May 10, 2012, the staff of the Honorable Donald W. DeLeo, Surrogate, attempted unsuccessfully to contact respondent by telephone. The staff then searched for respondent on the New Jersey Court's Attorney Index and discovered that he was administratively ineligible to practice law.

The matter was referred to the District VI Ethics Committee (which transferred the matter to the District XII Committee). Within two weeks, respondent paid his assessment. On June 1, 2012, he was placed on the eligible list.

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. However, 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 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); 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).

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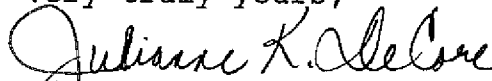
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Here, respondent stipulated to knowing he was ineligible to practice. Knowledge of the ineligibility results in a reprimand, unless there is considerable mitigation. The Board determined that the mitigating factors offered by respondent were not compelling enough to reduce the quantum of discipline.

Enclosed are the following documents:

1. Notice of motion for discipline by consent, dated March 11, 2013;
2. Stipulation of discipline by consent, dated April 1, 2013;
3. Affidavit of consent, dated March 19, 2013;
4. Ethics history, dated September 26, 2013.

Very truly yours,

  
Julianne K. DeCore  
Chief Counsel

JKD/tk

c: Bonnie C. Frost, Chair, Disciplinary Review Board  
(w/o enclosures)  
Charles Centinaro, Director, Office of Attorney Ethics  
(w/o enclosures)  
Bill R. Fenstemaker, Chair, District XII Ethics  
Committee (w/o enclosures)  
Michael F. Brandman, Secretary, District XII Ethics  
Committee (w/o enclosures)  
Bennet D. Zurofsky, respondent's counsel