

SUPREME COURT OF NEW JERSEY  
Disciplinary Review Board  
Docket No. DRB 99-257

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IN THE MATTER OF  
SHELDON H. KRONEGOLD  
AN ATTORNEY AT LAW

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Decision

Argued: October 14, 1999

Decided: February 22, 2000

Elisa Leib appeared on behalf of the District XI Ethics Committee ("DEC").

Respondent appeared *pro se*.

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

This matter was before us based on a recommendation for discipline filed by the District XI Ethics Committee. Although all three counts of the ethics complaint charged respondent with violations of *RPC* 5.5 (practicing law while ineligible) and *RPC* 8.4(c)

(conduct involving dishonesty, fraud, deceit or misrepresentation), before the DEC hearing the presenter withdrew count one of the complaint. The hearing, thus, proceeded on the remaining two counts, of violations of *RPC 5.5* and *RPC 8.4(c)*.

Respondent was admitted to the New Jersey bar in 1983. In 1995, after he admitted a violation of *RPC 1.5* for failure to provide a written fee agreement and to provide an adequate explanation of his representation to a new client, the matter was diverted, pursuant to *R. 1:20-3(i)(2)(b)(i)*.

\* \* \*

Because respondent conceded that he was ineligible to practice law for failure to pay the required annual assessment to the New Jersey Lawyers' Fund for Client Protection ("CPF"), the central issue in this matter is whether respondent practiced law while ineligible. According to a January 5, 1999 letter provided by the CPF, respondent was ineligible to practice law from September 30, 1996 through December 13, 1998.

Kevin Noonan, a supervisor employed by Material Damage Adjustment Corporation ("MDAC"), presumably an insurance claims adjuster, testified at the DEC hearing. According to Noonan, in October 1998, one of the claims examiners he supervised reported that, because he was experiencing difficulty reaching respondent, he wondered whether respondent was still practicing law in New Jersey. As a result, Noonan contacted "the Ethics

office in Trenton” (presumably the Office of Attorney Ethics) and was informed that respondent had been ineligible to practice law since September 30, 1996. Noonan produced copies of the following: (1) claim settlement check dated May 20, 1997, in the amount of \$1,500, issued by the National Consumer Insurance Company and payable jointly to Maria Soler and respondent and (2) claim settlement check dated May 29, 1997, in the amount of \$1,500, issued by the Eagle Insurance Company and payable jointly to José Concepción and respondent. Noonan stated that respondent apparently endorsed both checks and that he was the attorney of record, according to MDAC’s files. Noonan explained that MDAC sends checks only to attorneys of record or to claimants who are not represented by counsel.

Noonan identified copies of two letters, both dated April 3, 1998 (during respondent’s period of ineligibility), from respondent to two insurance companies on behalf of several claimants in a matter (*Tavarez*). Although the letters were prepared on respondent’s stationery and purported to be from respondent, they were not signed by him and contained the following language: “By Wilma Colon Ariza Claims Examiner.” Additionally, Noonan stated that one of MDAC’s files contained a copy of a complaint captioned *Virgilio Santana Carmona vs. Manuel Polanco* and filed on March 11, 1997 (during respondent’s ineligibility) in the Superior Court of New Jersey, Passaic County Special Civil Part. The complaint, listing respondent as the attorney for plaintiff, contained a signature purporting to be that of respondent.

According to Noonan, MDAC sent an investigator to respondent's office address, 1160 Main Avenue, Clifton, New Jersey. The investigator learned from a realtor, the current tenant at that address, that respondent had moved from the property almost one year earlier. When Noonan contacted "the Bar Association" (presumably the ethics authorities) in both Trenton and Passaic, he was informed that respondent's office address was 1160 Main Avenue, Clifton, New Jersey.

Although respondent did not testify at the DEC hearing, he stated that he had turned over all of his New Jersey files to three or four New Jersey attorneys.<sup>1</sup> According to respondent, he practiced in New York, not New Jersey. He produced an "affidavit"<sup>2</sup> in which a New Jersey attorney contended that, during the summer of 1998, he represented the claimants in the *Tavarez* matter and that respondent did not participate in the settlement or receive any fees in that matter. Respondent further claimed that, after he was no longer involved in several other matters, the insurance companies erroneously issued two settlement checks to him and that, in order to facilitate the payment of the claims, he endorsed one check and authorized another individual to endorse his name on the other check.

In turn, the presenter elicited testimony from Noonan that MDAC never received a substitution of attorney or any other document indicating that another attorney was assuming

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<sup>1</sup> Respondent was under oath when he made that statement. At the beginning of the hearing, the panel chair swore respondent in as a witness at the same time as Noonan.

<sup>2</sup> The "affidavit" was not notarized or witnessed.

responsibility for respondent's cases. Noonan also remarked that any oral notification of change of counsel would not have been accepted.

Respondent denied having signed the two April 3, 1998 letters that were sent to MDAC on his stationery and denied having signed the special civil part complaint filed on March 11, 1997 in the *Carmona vs. Polanco* matter. Respondent offered no explanation for the preparation of those documents on his stationery. At the Board hearing, respondent argued that another attorney who had been disbarred had used his name. He also contended that another attorney, with whom he had shared a secretary, had filed the *Carmona* complaint using his letterhead and had signed his name as a "clerical error." Respondent maintained that, although he had not filed the complaint, he signed the substitution of attorney because he was concerned that the statute of limitations would otherwise preclude litigation of that matter.

\* \* \*

The DEC found that, on at least three occasions, respondent practiced law while on the ineligible list from September 30, 1996 to December 13, 1998. The DEC concluded that the special civil part complaint filed on March 11, 1997 bearing respondent's name, office address and signature, as well as the two May 1997 settlement checks containing his endorsement, demonstrated that respondent had practiced law while ineligible. The DEC

observed that the affidavit submitted by the attorney who allegedly assumed responsibility for respondent's files addressed only the *Tavarez* matter and did not explain respondent's involvement in the special civil part matter or his endorsement of the settlement checks. Finding a violation of *RPC 5.5*, the DEC recommended a three-month suspension. The DEC found no violation of *RPC 8.4(c)*, dismissing that charge.

\* \* \*

After a *de novo* review of the record, we find that the DEC's conclusion that respondent's conduct was unethical is supported by clear and convincing evidence. Respondent conceded that he was ineligible to practice law in New Jersey. According to the January 5, 1999 letter from the CPF, respondent was ineligible to practice law from September 30, 1996 through December 13, 1998. Respondent denied any impropriety, claiming that he practiced law only in New York during that time.

The record developed at the hearing demonstrates that respondent engaged in the following activities during the time that he was ineligible to practice law:

- endorsed a \$1,500 claim settlement check, dated May 20, 1997, payable to Maria Soler and respondent.
- endorsed a \$1,500 claim settlement check, dated May 29, 1997, payable to José Concepción and respondent.

- issued two letters dated April 3, 1998 to two insurance companies in the *Tavarez* matter.
- filed a complaint in special civil part in Passaic County, on March 11, 1997, in the *Carmona vs. Polanco* matter.

Respondent did not satisfactorily explain his conduct. With respect to the settlement checks, as noted earlier, respondent contended that the insurance companies had mistakenly issued the checks to him and that, in order to expedite the payment of the claims, he had endorsed one check and authorized another individual to endorse the other check. Respondent, however, produced no documentation, such as a substitution of attorney, to support his claim. Moreover, Noonan testified that MDAC's files did not contain any documentation regarding respondent's withdrawal from representation of the claimants, adding that any oral notification of substitution of counsel would not have been accepted.

Respondent denied having signed the special civil part complaint and the April 3, 1998 letters to the insurance companies. His explanation — that other attorneys either used his name or signed his name as a clerical error — is implausible and causes us concern about respondent's forthrightness. The letters to the insurance companies were prepared on respondent's letterhead and his name was inserted in the letter's closing. The letters were apparently signed by an employee of respondent, presumably under respondent's supervision. The special civil part complaint filed on March 11, 1997 in the *Carmona vs. Polanco* matter contained respondent's name and office address, identified respondent as

attorney for the plaintiff and bore a signature purporting to be respondent's. Respondent's explanation that another attorney signed his name in error is unworthy of belief.

We find, thus, that respondent violated *RPC* 5.5(a) by practicing law while ineligible. The DEC correctly dismissed the charge of a violation of *RPC* 8.4(c), as there was no proof that respondent engaged in conduct involving dishonesty, fraud, deceit or misrepresentation. Although, in appropriate circumstances, the failure to disclose information may constitute a misrepresentation, *see Crispin v. Volkswagenwerk AG*, 96 N.J. 336 (1984), there was no evidence of any attempt by respondent to mislead a client or other party into believing that he was eligible to practice law.

In cases in which attorneys practice law while ineligible, the discipline generally imposed is an admonition. *See In the Matter of Edward Wallace, III*, DRB 97-381 (1997) (admonition where attorney appeared twice in court in a criminal matter while ineligible to practice law); *In the Matter of Peter E. Hess*, DRB 96-262 (1996) (admonition where attorney, who failed to maintain a *bona fide* office, filed a lawsuit and continued to represent the client after the attorney became ineligible to practice law for failure to pay the annual assessment, the misconduct was confined to one matter). In the cases resulting in reprimands, the attorneys have committed other ethics violations, in addition to practicing law while ineligible. *See In the Matter of Madeline Schwartz*, DRB 99-084 (1999) (reprimand where attorney practiced law in approximately ten matters while ineligible, failed to maintain a *bona fide office* and, by appearing in court in a bankruptcy matter, misrepresented to the

court that she was an attorney in good standing; that matter is pending before the Court); *In re Namias*, 157 N.J. 15 (1999) (reprimand where attorney displayed lack of diligence, failed to communicate with a client and practiced law while ineligible); *In re Alston*, 154 N.J. 83 (1998) (reprimand where attorney practiced law while ineligible, failed to maintain a *bona fide* office and failed to cooperate with disciplinary authorities); *In re Armorer*, 153 N.J. 359 (1998) (reprimand where attorney committed gross neglect, failed to communicate with a client, failed to maintain a *bona fide* office and practiced law while ineligible).

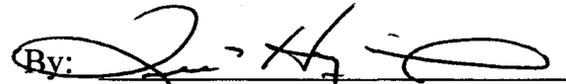
Although we recently imposed a three-month suspension on an attorney who exhibited lack of diligence, failed to maintain required records and practiced law while ineligible, the discipline was elevated because the attorney failed to answer the complaint, had received a prior admonition and breached his public duty as a municipal attorney, circumstances not present here. *In re Dudas*, 156 N.J. 540 (1999).

As noted above, we are concerned about respondent's candor. At the DEC hearing, respondent offered no explanation for the complaint and letters purportedly signed by him during his period of ineligibility, except to deny having signed the documents. Yet, at the Board hearing, respondent provided questionable explanations about one attorney's use of respondent's name and another attorney's having signed respondent's name in error. Moreover, although respondent contended that he had turned over all of his New Jersey files to three or four New Jersey attorneys, he failed to produce evidence, such as substitutions of attorney or testimony of those attorneys, of those file transfers. Based on the foregoing, we

deem respondent's lack of candor an aggravating factor and unanimously determine to impose a reprimand in this matter. Two members did not participate.

We further require respondent to reimburse the Disciplinary Oversight Committee for administrative costs.

Dated: 2/22/00

By:   
LEE M. HYMERLING  
Chair  
Disciplinary Review Board

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**SUPREME COURT OF NEW JERSEY**  
**DISCIPLINARY REVIEW BOARD**  
**VOTING RECORD**

**In the Matter of Sheldon H. Kronegold**  
**Docket No. DRB 99-257**

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**Argued: October 14, 1999**

**Decided: February 22, 2000**

**Disposition: Reprimand**

Members	Disbar	Suspension	Reprimand	Admonition	Dismiss	Disqualified	Did not Participate
Hyerling			X				
Cole			X				
Boylan							X
Brody			X				
Lolla			X				
Maudsley							X
Peterson			X				
Schwartz			X				
Wissinger			X				
<b>Total:</b>			7				2

By Label Frank 3/23/00  
Robyn M. Hill  
Chief Counsel