

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 14-036
District Docket No. IIIA-2012-0035E

IN THE MATTER OF
CLIFFORD G. FRAYNE
AN ATTORNEY AT LAW

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Decision

Decided: July 31, 2014

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

This matter was before us on a certification of the record filed by the District IIIA Ethics Committee (DEC), pursuant to R. 1:20-4(f). The complaint charged respondent with violating RPC 1.4(b) (failing to keep a client reasonably informed about the status of a matter) and RPC 5.5(a)(1) (practicing law while ineligible).

We determine to impose a reprimand.

Respondent was admitted to the New Jersey bar in 1975. He has no history of discipline.

Respondent was ineligible to practice law in New Jersey, from September 24, 2012 to May 14, 2013, for failure to pay the annual assessment to the New Jersey Lawyers' Fund for Client Protection (CPF). He had previously been ineligible, from September 28, 2009 to October 8, 2009. He is currently eligible, according to the CPF's records.

Service of process was proper in this matter. On December 2, 2013, the DEC secretary forwarded a copy of the complaint, by certified and regular mail, to respondent's office address, 136 Drum Point Road, Suite 7A, Brick, New Jersey 08723. The certification of the record does not state whether the certified mail was delivered, but Exhibit A to the certification contains a signed return receipt card, indicating delivery on December 3, 2013. The signature on the card is not respondent's. The regular mail was not returned.

Respondent did not file an answer within the prescribed time.

On January 16, 2014, the DEC secretary sent a letter to respondent, advising him that, unless he filed an answer to the complaint within five days, the allegations of the complaint would be deemed admitted and the record would be certified to us for the imposition of discipline. The letter also served to amend the complaint to charge respondent with violating RPC

8.1(b), based on his failure to file an answer to the complaint. The letter was sent to respondent's office address by regular mail, which was not returned.

On January 24, 2014, the DEC secretary certified the record to us, after respondent failed to file an answer to the complaint. Five days later, on January 29, 2014, the DEC secretary received an unverified answer from respondent. By letter dated January 30, 2014, the DEC secretary advised respondent that his answer was not verified and that he had to file a verified answer by February 7, 2014. The letter was sent to respondent's office address by certified and regular mail. Exhibit E contains a signed return receipt card, indicating delivery of the certified mail on February 4, 2014. The signature is illegible. On May 7, 2014, the DEC secretary provided a letter to the Office of Board Counsel, indicating that the regular mail had not been returned.

As of the date of the supplemented certification of the record, February 10, 2014, respondent had not filed a verified answer.

Count One

In January 2006, Marlene Nagy retained respondent to pursue a patent for an invention. Respondent filed the required

documents with the United States Patent and Trademark Office (the Trademark Office) to obtain the patent. The Trademark Office rejected the patent application. Respondent then filed a revised second application, which was also rejected.

Although respondent had previously communicated with Nagy about the status of her application, the last communication she received from him was in March 2012, when he informed her that the second application had been filed. Respondent admitted that he never informed Nagy of the rejection of the second application.¹

The complaint charged respondent with violating RPC 1.4(b).

Count Two

Respondent admitted that he was ineligible to practice law, from September 24, 2012 through May 13, 2013, as a result of his failure to pay the annual assessment to the CPF. He also conceded that he continued to practice law while ineligible.

The complaint charged respondent with violating RPC 5.5(a)(1).

¹ Presumably, respondent's admissions were made to the DEC investigator. The complaint did not charge respondent with a violation of RPC 8.4(c) (misrepresentation; in this case, by silence).

The facts recited in the complaint support the charges of unethical conduct. Respondent's failure to file an answer is deemed an admission that the allegations of the complaint are true and that they provide a sufficient basis for the imposition of discipline. R. 1:20-4(f)(1).

Respondent is guilty of failing to communicate with a client, practicing law while ineligible, and failing to cooperate with disciplinary authorities.

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 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 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 Steven V. Podolsky, DRB 05-187 (September 19, 2005) (attorney filed a civil complaint during a seven-month period when he was

ineligible to practice law for non-payment of the annual registration assessment).

If, in addition to practicing law while ineligible, the attorney fails to adequately communicate with the client, as here, an admonition may still result. See, e.g., In the Matter of Howard A. Gross, DRB 04-058 and DRB 04-059 (May 5, 2004) (attorney practiced law for less than a two-month period while ineligible and failed to communicate with the client in one matter; gross neglect and lack of diligence also found; in mitigation, the attorney was suffering from drug and alcohol abuse) and In the Matter of Douglas F. Ortelere, DRB 03-377 (February 11, 2004) (attorney practiced law while ineligible during periods ranging from one day to eleven months and failed to communicate with the client; the attorney also delayed the payment of the client's medical expenses and the disbursement of the client's share of settlement proceeds; in mitigation, the attorney was suffering from depression at the time of his misdeeds and had no disciplinary history since his admission to the bar in 1983).

A reprimand is usually imposed when the attorney has an extensive ethics history, has been disciplined for conduct of the same sort, has also committed other ethics improprieties, or is aware of the ineligibility and practices law nevertheless.


See, e.g., In re Jay, 210 N.J. 214 (2012) (attorney was aware of ineligibility and practiced law; prior three-month suspension for possession of cocaine and marijuana); In re (Queen) Payton, 207 N.J. 31 (2011) (attorney who practiced law while ineligible was aware of her ineligibility and had received an admonition for the same violation); and 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; the attorney was aware of her ineligibility).

The complaint does not state – and the record does not show – that respondent practiced law knowing that he was ineligible to do so. Therefore, an admonition would be proper in this case, particularly because respondent's lengthy career of almost forty years allows the inference that his conduct was aberrational. Nevertheless, respondent caused this case to proceed on a default basis. "A respondent's default or failure to cooperate with the investigative authorities operates as an aggravating factor, which is sufficient to permit a penalty that would otherwise be appropriate to be further enhanced." In re Kivler, 193 N.J. 332, 342 (2008). We, thus, determine to enhance the otherwise appropriate measure of discipline, an admonition, to a reprimand.

Member Gallipoli 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: 
Ellen A. Brodsky
Chief Counsel


SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Clifford G. Frayne
Docket No. DRB 14-036

Decided: July 31, 2014

Disposition: Reprimand

Members	Disbar	Suspension	Reprimand	Dismiss	Disqualified	Did not participate
Frost			X			
Baugh			X			
Clark			X			
Gallipoli						X
Hoberman			X			
Singer			X			
Yamner			X			
Zmirich			X			
Total:			7			1


Ellen A. Brodsky
Chief Counsel