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SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 99-084

IN THE MATTER OF
MADELINE SCHWARTZ,
AN ATTORNEY AT LAW

Decision

Argued: May 13, 1999

Decided: November 17, 1999

Louis Hasner appeared on behalf of the District IV Ethics Committee.

Respondent appeared pro se.

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

This matter was before the Board based on a recommendation for discipline filed by the District IV Ethics Committee ("DEC").

Respondent was admitted to the New Jersey bar in 1988 and maintains an office for the practice of law in Philadelphia, Pennsylvania. She has no prior ethics history.

* * *

The two-count complaint alleged that, at a time when respondent was on the New Jersey Supreme Court's ineligible list for failure to pay the New Jersey Lawyers' Fund for Client Protection ("CPF") assessment, she represented Gerald S. Williams in a New Jersey bankruptcy matter. The complaint also alleged that, at that time, respondent did not maintain a bona fide office, in violation of RPC 5.5(a). Finally, the complaint alleged that respondent misrepresented to the bankruptcy court that she was eligible to practice law, in violation of RPC 8.4(c).

In or about August 1997, in the course of his duties as the bankruptcy trustee in the Williams matter, Steven R. Neuner, Esq. sent correspondence to respondent at the New Jersey address provided on her letterhead. That correspondence was returned to Neuner as undeliverable. When Neuner dialed the telephone number on respondent's letterhead, the individual who answered the call told Neuner that, although the telephone number was that of the office listed on the letterhead, respondent did not have an office there. On October 10, 1997 Neuner filed a grievance with the Office of Attorney Ethics ("OAE").

Respondent testified at the DEC hearing. While admitting a violation of RPC 5.5(a) for her failure to maintain a bona fide office, she explained that she had shared an office at the letterhead address with a non-attorney friend, Deborah Loggia. According to respondent, Loggia had offered her the use of the office until she "got back on her feet" after the break-up of her former law partnership in Philadelphia. Respondent testified that the

details of the rental, which included a receptionist to answer phones and an office area, had been left to Loggia and her then partner, one "Mr. Gonzalez."¹ Respondent stated that she paid \$200 per month for the use of the office space. It is not clear to whom those payments were made or if there was a lease agreement.

According to respondent, she believed at all times that the office arrangement with Loggia complied with the bona fide office rule. Respondent claimed to be unaware that Loggia, apparently a former girlfriend of the building's owner, did not have an office arrangement with the owner. Respondent testified that she picked up mail there on a weekly basis for some time and that she met clients there several times, without incident.

With regard to practicing law while on the CPF's ineligible list, respondent did not deny that she was ineligible during certain periods between 1990 and 1997, as alleged. She admitted that, in that period of seven years, she represented twenty to thirty New Jersey clients.²

At the DEC hearing, respondent testified that she could not afford to pay the annual assessments when they were due. Respondent stated that she was primarily a Pennsylvania attorney, that she rarely took New Jersey cases and did so only to accommodate clients of little means, like Williams. Finally, respondent stated that she had referred the Williams

¹Gonzalez' full name does not appear in the record, thereby rendering it impossible to ascertain his affiliation with respondent.

²At the Board hearing, respondent revised that figure to approximately ten matters.

matter to another attorney and had voluntarily turned over her fee to the new attorney, all before this grievance was filed, because she was unfamiliar with bankruptcy practice. Moreover, respondent claimed that she deleted all references to a New Jersey office from her letterhead upon her initial contact with the OAE, early in the investigation of the grievance.

With regard to the allegation of a violation of RPC 8.4(c), respondent was adamant that, by appearing in bankruptcy court, she did not intend to deceive or misrepresent her status as an eligible attorney. Rather, she portrayed herself as a financially strained sole practitioner with a great desire to help an indigent client. According to respondent, Williams had insisted that she defend him in his bankruptcy case. Respondent admitted knowing at the time that she was ineligible to practice law in New Jersey.

* * *

The DEC found that respondent violated RPC 5.5(a) when she failed to maintain a bona fide office and when she practiced law while ineligible. The DEC also found a violation of RPC 8.4(c) for respondent's appearance in the bankruptcy court, which the DEC viewed as a misrepresentation to the court and the bar that respondent was eligible to practice law in New Jersey.

The DEC recommended a reprimand, with the additional requirement that respondent pay all outstanding CPF assessments and attend continuing legal education courses.³

* * *

Upon a de novo review of the record, the Board was satisfied that the DEC's conclusion that respondent was guilty of unethical conduct is supported by clear and convincing evidence.

Respondent failed to maintain a bona fide office and practiced law when she was ineligible, in violation of RPC 5.5(a). Moreover, the Board found that respondent violated RPC 8.4(c) by appearing in court knowing that she was ineligible, thereby misrepresenting to the court that she was an attorney in good standing in New Jersey.

The Board rejected respondent's urging that her misconduct should be mitigated by her desire to help Williams.

Cases involving failure to maintain a bona fide office ordinarily result in the imposition of a reprimand. In re Kasson, 141 N.J. 83(1994) (reprimand imposed for failure to maintain a bona fide office after a trial judge was unable to contact the attorney at his office to discuss a pending case. No attorney or responsible person was available at the

³The DEC recommended that respondent be enrolled in the State Bar Association "diversionary continuing legal education program." Although a "Law Office Management" program for diverted ethics matters has been in development for some time, that program is not yet operational.

attorney's office location or by telephone during normal business hours.) But see In the Matter of Basil D. Beck, III, DRB 95-160 (February 1996) (admonition imposed for failure to maintain a bona fide office. Several mitigating factors were present, including the attorney's belief that his office met the requirements of the rule and his swift measures to remedy the deficiencies.)

When the above conduct also involves practicing law while ineligible, a reprimand could still be the appropriate level of discipline in some situations. See In re Armor, 153 N.J. 358(1998) (reprimand imposed for gross neglect, pattern of neglect, failure to communicate, practicing law while on the ineligible list and failure to maintain a bona fide office); and In re Alston, 154 N.J. 83 (1998) (reprimand imposed where the attorney appeared in New Jersey court five times while on the ineligible list, failed to maintain a bona fide office and failed to answer the OAE's requests for information for a six-month period. In mitigation, it was considered that the attorney did not know that his partner had not paid the annual assessments and that the office arrangement was not bona fide.)

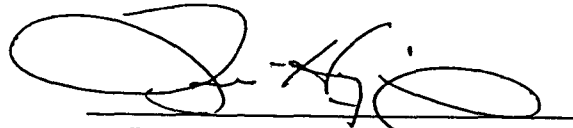
Here, knowing that, during a seven-year period, she was ineligible to practice law, respondent handled approximately ten New Jersey matters during that time. However, the additional factor of failure to answer the OAE's requests for information was not present here. Hence, a seven-member majority of the Board determined that a reprimand is sufficient discipline for respondent's misconduct. One member would have imposed a three-month suspension, likening this case to In re Van Sciver, 158 N.J. 4 (1999) (three-

month suspension imposed where, for a period of six months and in three separate matters, the attorney practiced law while on the eligible list; the attorney also failed to cooperate with the ethics authorities.) The Board also required respondent to pay all outstanding CPF assessments.

One member did not participate.

The Board further required respondent to reimburse the Disciplinary Oversight Committee for administrative expenses.

Dated: 11 / 17 / 99



LEE M. HYMERLING
Chair
Disciplinary Review Board

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Madeline Schwartz
Docket No. 99-084

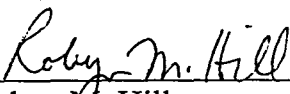
Argued: May 13, 1999

Decided: November 17, 1999

Disposition: Reprimand

Members	Disbar	Suspension	Reprimand	Admonition	Dismiss	Disqualified	Did not Participate
Hymerling			X				
Cole			X				
Boylan			X				
Brody			X				
Lolla		X					
Maudsley			X				
Peterson			X				
Schwartz							X
Wissinger			X				
Total:			7				1

* Member Thompson is on a temporary leave of absence


Robyn M. Hill
Chief Counsel