

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 09-193
District Docket No. VI-2008-0020E

IN THE MATTER OF
KAREN E. RUCHALSKI
AN ATTORNEY AT LAW

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Decision

Decided: October 15, 2009

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

This matter was before us on a certification of default filed by the District VI Ethics Committee ("DEC"). The complaint charged respondent with failure to cooperate with disciplinary authorities, a violation of RPC 8.1(b), and, possibly, practicing law while ineligible for failure to pay the annual attorney assessment to the New Jersey Lawyers' Fund for Client Protection ("CPF") (no RPC cited). We determine to reprimand respondent.

Respondent was admitted to the New Jersey bar in 2001. In 2008, she received an admonition for failing to communicate with

a client, practicing law during a period of ineligibility, and failing to cooperate with disciplinary authorities. Specifically, respondent did not provide a matrimonial client with a copy of documents filed with the court on his behalf, did not inform him of the re-scheduled return date of a motion, and did not notify him of the outcome of the motion. She also failed to reply to two letters from the ethics investigator and practiced law while ineligible.

In mitigation, we considered (1) that respondent had relied on established practice, at the law firm in which she was an associate, to have office staff mail all pleadings/documents to clients, (2) that she believed that she had already provided the ethics investigator all that she had and all that was required of her, and (3) that she was unaware of her ineligible status because it was her firm's practice to pay the annual assessment on her behalf. We also noted that she had not been disciplined before. In the Matter of Karen E. Ruchalski, DRB 07-391 (March 28, 2008).

According to the CPF report, respondent was ineligible to practice law from September 15, 2003 through June 24, 2004 (the period covered by the above letter of admonition); September 26, 2005 through March 15, 2006; and September 24, 2007 through June 25, 2008.

Service of process was proper in this matter. On February

10, 2009, the DEC secretary mailed a copy of the complaint to respondent's home address, as listed on the CPF's attorney registration system, by regular and certified mail. The certified card was returned with an illegible signature. The regular mail was not returned. Respondent did not file an answer to the complaint.

On May 29, 2009, the DEC secretary sent a letter to the same address, by regular and certified mail. The letter advised respondent that, if she did not file an answer within five days of the date of the letter, the record would be certified directly to us for the imposition of sanction.

On June 1, 2009, Megan Ruchalski signed the certified mail card. The regular mail was not returned.

Respondent did not file an answer to the complaint.

As indicated above, respondent remained ineligible from September 26, 2005 through March 16, 2006 and from September 24, 2007 through June 24, 2008. The complaint alleges that, nevertheless, the attorney registration data indicated that respondent was in sole practice at 55 State Street, Hackensack, New Jersey, 07601 from June 26, 2006 through at least January 20, 2008.

Although the heading of the first count of the complaint reads "**Practicing While Ineligible**," it is not entirely clear

that the complaint intended to charge respondent with that violation: it did not cite an RPC and it alleges that "it appears that respondent may have practiced law while ineligible for failure to pay the annual attorney assessment to the [CPF]." (Emphasis added).

The complaint also alleges that, during a phone conversation with the ethics investigator, on July 29, 2008, respondent represented that she was not practicing law at that time and that she had worked on a temporary assignment for a law firm known as Deloit & Fuch. The assignment, which consisted of document review, lasted from June 30, 2008 through July 23, 2008. Respondent was no longer ineligible during that period, having been reinstated on June 25, 2008.

During the above conversation, respondent agreed to provide the investigator with a detailed employment history for the periods from September 2005 through March 2006 and from September 2007 to the present. She did not do so, despite three follow-up phone messages from the investigator and a letter from him, dated October 9, 2008.

The complaint charged respondent with failure to cooperate with the ethics investigator, a violation of RPC 8.1(b).

Under R. 1:20-4(f)(1), 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. The facts recited in complaint, however, support only the charge of failure to cooperate with disciplinary authorities (RPC 8.1(b)).

Despite being requested by the DEC investigator to provide a detailed employment history from September 2005 through March 2006 (when she was ineligible) and from September 2007 (when she again became ineligible) through the present, respondent did not do so. On four subsequent occasions, the investigator reminded her of her obligation to comply with his request, to no avail. Unquestionably, thus, respondent violated RPC 8.1(b).

On the other hand, the record does not support a finding that respondent practiced law while ineligible. First, it is not altogether clear that the complaint charged her with that impropriety. The complaint did not cite the relevant rule, RPC 5.5(a), and alleged merely that "it appears" that respondent practiced law while ineligible. Second, the basis for the allegation that "it appears" that respondent practiced law during periods of ineligibility was the indication, in the attorney registration system, that respondent had an office in Hackensack at those times. That she may have had a law office, however, does not necessarily mean that she was practicing law. Under the circumstances, the record does not permit a finding that

respondent continued to practice law when she was not eligible.

Failure to cooperate with disciplinary authorities typically results in an admonition, if the attorney does not have an ethics history. See, e.g., In re Ventura, 183 N.J. 226 (2005) (attorney did not comply with ethics investigator's repeated requests for a reply to the grievance; default case); In the Matter of Kevin R. Shannon, DRB 04-512 (June 22, 2004) (attorney did not promptly reply to the district ethics committee investigator's requests for information about the grievance); In the Matter of Keith O. D. Moses, DRB 02-248 (October 23, 2002) (attorney failed to reply to the district ethics committee's requests for information about two grievances); In the Matter of Jon Steiger, DRB 02-199 (July 22, 2002) (attorney did not reply to the district ethics committee's numerous communications regarding a grievance); In the Matter of Grafton E. Beckles, II, DRB 01-395 (December 21, 2001) (attorney did not cooperate with disciplinary authorities during the investigation and hearing of a grievance); In the Matter of Andrew T. Brasno, DRB 97-091 (June 25, 1997) (attorney failed to reply to the ethics grievance and failed to turn over a client's file); and In the Matter of Mark D. Cubberley, DRB 96-090 (April 19, 1996) (attorney failed to reply to the ethics investigator's requests for information about the grievance).

If the attorney has been disciplined before, but the attorney's ethics record is not serious, then reprimands have been imposed. See, e.g., In re Wood, 175 N.J. 586 (2003) (attorney failed to cooperate with disciplinary authorities; prior admonition for similar conduct); In re DeBosh, 174 N.J. 336 (2002) (failure to cooperate with disciplinary authorities; prior three-month suspension); and In re Williamson, 152 N.J. 489 (1998) (attorney failed to cooperate with disciplinary authorities; prior private reprimand for failure to carry out a contract of employment with a client in a matrimonial matter and failure to surrender the client's file to a new attorney).

Absent special considerations, it would seem, thus, that a reprimand is in order for respondent's second violation of RPC 8.1(b) (her 2008 admonition was also based on failure to cooperate with the ethics investigator) and, furthermore, that the reprimand should be elevated to a censure because this matter is proceeding on a default basis. In a default matter, the appropriate discipline for the found ethics violations is enhanced to reflect the attorney's failure to cooperate with disciplinary authorities as an aggravating factor. In the Matter of Robert J. Nemshick, DRB 03-364, 03-365, and 03-366 (March 11, 2004) (slip op. at 6).

For two reasons, however, we believe that the discipline in

this case should be kept at the reprimand level: (1) respondent's first violation of RPC 8.1(b) was mitigated by her belief that she had already provided to the investigator all that was required of her; in the matter that led to her admonition, she testified that she had given all her statements and records to a former investigator and that, therefore, she assumed that the new investigator had everything in his possession and (2) although it is true that, in the present matter, respondent did not comply with the investigator's request for her employment history during the periods that she was ineligible, there was no indication at all that she was practicing law during those periods. All the usual telltale signs were missing. For instance, no judges, adversaries, or clients complained; respondent was not seen or heard rendering legal advice or appearing before a court; there was no evidence that she had signed retainer agreements, was interviewing prospective clients, or was advertising her legal services. Simply stated, there was no reason to suspect that she was practicing law, other than the fact that the attorney registration system listed her as having a law office. Consequently, there was no "live" grievance or complaint before the DEC.

This is not to say that respondent should not have complied with the investigator's request. To say, however, that her failure to do so greatly prevented the disciplinary authorities

from investigating unethical conduct on her part would be unfair.

Furthermore, when particular circumstances so warrant, default cases do not result in enhanced discipline. In In re Ventura, supra, 183 N.J. 226, the attorney received only an admonition, despite having allowed the case to proceed on a default basis. See also In the Matter of Wesley S. Rowniewski, DRB 01-335 (January 10, 2002) (admonition; formal ethics complaint charged attorney with failure to cooperate with disciplinary authorities as a result of his failure to reply to the grievance in the underlying matter); In the Matter of Nejat Bumin, DRB 98-387 (March 25, 1999) (admonition; formal ethics complaint charged attorney with failure to cooperate with disciplinary authorities as a result of his failure to provide the district ethics committee with documents pertaining to his attorney bank accounts); and In re Kearns, 179 N.J. 507 (2004) (reprimand; attorney charged with lack of diligence, failure to communicate with the client, and failure to promptly pay funds to a third party based on his derelictions in the representation of clients in the refinancing of their home mortgage; specifically, the attorney failed to pay off existing mortgages timely and failed to forward closing documents to the new mortgagee timely, causing creditors to threaten his clients with foreclosure; the appropriate measure of discipline was a reprimand, which we

chose not to elevate to the next degree because it would be "too severe a penalty").

For the foregoing reasons, we determine that a reprimand is sufficient discipline in this case.

Member Baugh 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
Louis Pashman, Chair

BY: 
Julianne K. DeCore
Chief Counsel

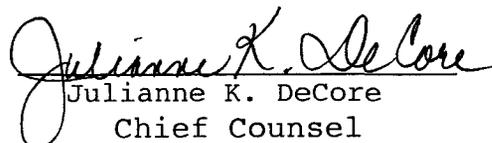
SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Karen E. Ruchalski
Docket No. DRB 09-193

Decided: October 15, 2009

Disposition: Reprimand

Members	Disbar	Suspension	Reprimand	Dismiss	Disqualified	Did not participate
Pashman			X			
Frost			X			
Baugh						X
Clark			X			
Doremus			X			
Stanton			X			
Wissinger			X			
Yamner			X			
Zmirich			X			
Total:			8			1


Julianne K. DeCore
Chief Counsel