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SUPREME COURT OF NEW JERSEY  
Disciplinary Review Board  
Docket No. DRB 07-029  
District Docket No. XIV-05-538E

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IN THE MATTER OF  
LORI KANIPER  
AN ATTORNEY AT LAW

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Decision

Argued: March 15, 2007

Decided: May 24, 2007

Michael Sweeney appeared on behalf of the Office of Attorney Ethics.

Respondent appeared pro se.

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

This matter came before us on a disciplinary stipulation between the Office of Attorney Ethics ("OAE") and respondent. Respondent stipulated to practicing law while ineligible for failing to pay the annual assessment to the New Jersey Lawyers' Fund for Client Protection ("the Fund") (RPC 5.5(a)). The OAE

recommended an admonition. We find that a reprimand more properly addresses respondent's misconduct.

Respondent was admitted to the New Jersey bar in 1987. At the relevant time, she was employed by the Middlesex County Prosecutor's Office ("Prosecutor's Office"). She currently practices law in Edison, New Jersey.

Respondent has no history of discipline. The Fund's form shows that she was ineligible to practice law from July 18, 1991 to May 20, 1998; September 20, 1999 to September 19, 2003; and September 27, 2004 to October 12, 2005.

From 1986 to 1998, respondent was a "stay-at-home mom," taking care of two children. She was ineligible to practice law during a portion of that time - July 18, 1991 to May 20, 1998. Thereafter, she was employed by the Prosecutor's Office from June 8, 1998 to October 24, 2005.

According to respondent, she re-entered the work force in 1998, because of marital and financial pressures. Initially, she worked for the Prosecutor's Office on a part-time basis, in the Megan's Law Unit. In conjunction with her employment, she paid her back assessments to the Fund and became eligible to practice law on May 20, 1998.

The Prosecutor's Office's policy was to reimburse its attorneys for the payment of their annual assessment to the

Fund. Respondent was eligible for such reimbursement during her tenure with that office.

On July 18, 2000, the Mercer County Superior Court, Law Division, issued a writ of execution against respondent's wages for payments to the New Jersey Department of Education, for an unpaid student loan. Pursuant to that order, the Prosecutor's Office executed respondent's wages in the amount of \$60 per pay.

The Fund again declared respondent ineligible as of September 20, 1999, for failure to pay her annual assessment. Respondent claimed that, because it was her husband's responsibility to pay the bills, she was unaware that she had become ineligible.

In November 2000, respondent became a full-time Assistant Prosecutor. On February 5, 2003, she and her husband divorced. Following the divorce, respondent became responsible for her own finances. She claimed that she was having difficulty meeting her financial obligations.

According to the stipulation, respondent discovered that she had been ineligible to practice law for four consecutive years, paid her assessments to the Fund, and became eligible again on September 19, 2003. Respondent never sought reimbursement from the Prosecutor's Office for the Fund's assessments for those four years (2000 to 2003).

In February 2004, the Fund updated its attorney registration, listing respondent's address as 136 Ellisdale Road, Allentown, New Jersey, her parents' home, where she lived with her two children. On March 16, 2004, the Fund mailed the annual assessment to respondent at that Allentown address. Respondent, however, did not pay it.

On April 1, 2004, respondent sought reimbursement from the Prosecutor's Office by submitting a copy of her April 1, 2004 personal check for \$190, payable to the Fund for her 2004 annual assessment. Although the Prosecutor's Office accepted the "non-negotiated check" as proof of payment, respondent never mailed that check to the Fund. On June 2, 2004, respondent received her reimbursement check for the 2004 annual assessment, and negotiated it three weeks later.

On July 20, 2004, the Fund sent respondent a second bill for her assessment. In August 2004, when respondent heard her co-workers discussing the annual assessment, she realized that she had not paid it.

After respondent wrote several checks, on August 27, 2004, her checking account became overdrawn. A September 10, 2004 deposit brought the balance up to \$690.57. During the week of September 27, 2004, the Fund sent a third notice to respondent, informing her that she was ineligible to practice law for non-

payment of the annual assessment. On that date, respondent checked her bank balance, which was \$104.88. She "issued" a \$240 check to the Fund (\$190 fee plus a \$50 reinstatement fee). On October 4, 2004, respondent again checked her balance, which was \$74.36. Respondent's bank statement showed an overdraft of \$84.86 on October 12, 2004.

By letter dated October 18, 2004, sent by regular mail, the Fund's director notified respondent that her check had been returned for insufficient funds, that it nullified her removal from the 2004 ineligible list, and that she would remain ineligible until she paid her assessment and the bank fee. The letter was not returned to the Fund.

The stipulation has annexed to it Exhibit 1, to which the stipulation frequently refers. It is a December 16, 2005 interview of respondent by the OAE. During that interview, respondent stated, among other things, that she never received the Fund's director's letter, assumed her check had cleared, was unaware that, as of October 18, 2004, she remained on the ineligible list, did not balance her checkbook, and was "financially irresponsible."

Respondent claimed that, in September 2005, she "wrote out check no. 196 to [the Fund] for the annual assessment." However, her bank had no record of that check posted to her account.

Respondent's bank balance was \$38.06 on October 6, 2005, and \$26.06 on October 12, 2005.

On October 12, 2005, both respondent and the prosecutor learned that she was on the Fund's list of ineligible attorneys. She sent the prosecutor a written apology, noting that she had mailed check no. 196 to the Fund in August 2005. According to the stipulation, the Fund never received this check. On October 12, 2005, respondent hand-delivered a \$542 check to the Fund, with only a \$26 balance in her account. Two days later, on October 14, 2005, she deposited \$750 into her account. The check to the Fund cleared her account on October 18, 2006.

Respondent was "forced" to resign her position as an assistant prosecutor as of October 24, 2005. On November 17, 2005, the first assistant prosecutor notified several defense attorneys that respondent had been ineligible to practice law when she tried cases in which they had been involved. As a result, two defendants filed motions to vacate their sentences. Those motions were denied.

During the December 16, 2005 OAE interview, respondent claimed that she was unaware of her ineligibility in 2004 and 2005. She raised, as mitigating circumstances, her divorce, forced resignation from the prosecutor's office, financial problems, "children and living with her parents."

Respondent's interview responses to the OAE were confusing and difficult to follow. She contradicted the stipulated date on which she hand-delivered a check to the Fund, and denied that the Fund had sent her a copy of the dishonored check. Rather, she claimed that she had been personally handed the dishonored check when she went to Trenton to pay her assessment to the Fund.

According to respondent, on October 12, 2005, she informed the prosecutor that, the year before, a judge had informed her about her ineligibility. As a result, she immediately went to Trenton to pay her arrearages.

Respondent's explanation for forgetting to pay her 2004 assessment was her impending divorce and her move to her parents' home. She speculated that she failed to pay the 2005 assessment because the bill was probably "sitting in a pile," and because she was fiscally irresponsible.

Respondent claimed that she was highly regarded by her colleagues and judges alike. However, the prosecutor would not "stand behind [her]." He told her that she would be "let go." Instead, she resigned her position.

Respondent maintained that her non-payment of the annual assessment was not unethical, purposeful or malicious. She stated that, during her marriage, she never saw the Fund's bills, and believed that her husband paid them. She added that, until her

marriage began to break down, she had not intended to return to the practice of law. According to respondent, after she moved to her parents' house, the post office continued to deliver her mail to her old address, even though she had arranged to have it forwarded. At some point, possibly in 2003, she notified the Fund, in person, of her change of address.

Respondent was unable to state whether the Fund's bills had been sent to her parents' address, whether her mother had put it aside for her, or whether she had simply not read them. She disavowed knowledge of having "bounced" the check to the Fund, stating that she did not "typically" balance her checkbook or check her bank statements; she kept "a running tab in [her] head."

Respondent also blamed her husband for failing to pay her student loan. Although respondent assumed he was paying it, she claimed that, if they were short of funds, her loan was not a priority. As a result of his non-payment, the Department of Higher Education obtained a judgment against her and the court ordered a wage execution of approximately \$800 a month.

The OAE recommended that respondent be admonished.

Following a de novo review of the record, we are satisfied that it contains clear and convincing evidence that respondent's conduct was unethical.



Respondent was ineligible to practice law for failure to pay the Fund's annual assessment on three separate occasions. During two of the three periods, she violated RPC 5.5(a) by practicing law while ineligible. She did not take responsibility for failing to pay the Fund's assessment, instead blaming her ex-husband, her parents, or the post office.

Respondent stipulated that, in April 2004, she presented the prosecutor's office with a copy of her non-negotiated check for reimbursement for the 2004 annual assessment, was reimbursed for the payment, negotiated the reimbursement check, and "never mailed the check" to the Fund. After she received the Fund's third notice, in September 2004, declaring her ineligible, she "issued" a \$240 check to the Fund on October 1, 2004, three days after she had checked her bank balance and discovered that she only had \$104.88 in her account. Not surprisingly, respondent's October 2004 bank statement showed an overdraft of \$84.86. Respondent allegedly had not seen the Fund's two prior letters, all of which had been sent to the same address.

On October 18, 2004, the Fund's director forwarded a copy of respondent's dishonored check to her, notifying her that her removal from the ineligible list had been nullified. Respondent again claimed that she never received the letter, and that she assumed that the check had cleared and that she was eligible to

practice. According to respondent, she did not balance her checkbook and, therefore, was unaware of the return of the check for insufficient funds.

An entire year elapsed before the prosecutor and purportedly respondent learned that she was again on the ineligible list. After the prosecutor announced his intention to terminate her employment, she submitted her resignation.

Not only did respondent engage in the unauthorized practice of law, but she also engaged in dishonest conduct by writing a check to the Fund against insufficient funds. That respondent checked her bank balance on several crucial dates bolsters the conclusion that she knew that she had insufficient funds to cover the check to the Fund, when she wrote it. Respondent also provided the OAE with an implausible explanation for failing to pay the earlier bills. That she received at least one of three notices from the Fund (the one declaring her ineligible) and that all of the letters were sent to the same address belie her claim that she did not receive them. We find as an aggravating factor, respondent's improbable excuses.

Practicing law while ineligible is generally met with an admonition if the attorney is unaware of the ineligibility or advances compelling mitigating factors. See In the Matter of William C. Brummell, DRB 06-031 (March 28, 2006) (admonition for

attorney who practiced law while ineligible for four months, did not know he was ineligible, and paid the Fund in person when he became aware of his ineligibility; the attorney had a prior reprimand and private reprimand); In the Matter of Richard J. Cohen, DRB 04-209 (July 16, 2004) (admonition for practicing law during a nineteen-month period of ineligibility; the attorney did know he was ineligible); In the Matter of Juan A. Lopez, Jr., DRB 03-353 (December 1, 2003) (admonition for attorney who practiced law while ineligible for nine months; the attorney was not aware that he was ineligible); In the Matter of David S. Rudenstein, DRB 02-426 (February 4, 2003) (admonition by consent for attorney who, for a period of eleven months, practiced law while ineligible); and In the Matter of Kevin B. Thomas, DRB 00-161 (July 26, 2000) (admonition for appearing in court twice while ineligible to practice law; in mitigation, we considered that the attorney was closing down his practice and no longer had any staff responsible for paying the annual assessment).

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 Perrella, 179 N.J. 499 (2004) (attorney reprimanded for advising his client that he was on the inactive list and then

practicing law; the attorney filed pleadings, engaged in discovery, appeared in court, and used letterhead indicating that he was a member in good standing of the Pennsylvania bar); In re Forman, 178 N.J. 5 (2003) (reprimand for attorney who, for a period of twelve years, practiced law in Pennsylvania while on the inactive list; compelling mitigating factors considered); In re Lucid, 174 N.J. 367 (2002) (reprimand for practicing law while ineligible; the attorney had been disciplined three times before: a private reprimand in 1990, for lack of diligence and failure to communicate with a client; a private reprimand in 1993, for gross neglect, lack of diligence, conduct prejudicial to the administration of justice, and failure to cooperate with disciplinary authorities; and a reprimand in 1995, for lack of diligence, failure to communicate with a client, and failure to prepare a written fee agreement); In re Hess, 174 N.J. 346 (2002) (reprimand, in a default matter, for practicing law while ineligible and failing to cooperate with disciplinary authorities; the attorney had received an admonition for practicing law while ineligible and failing to maintain a bona fide office in New Jersey); In re Ellis, 164 N.J. 493 (2000) (reprimand for attorney who, one month after being reinstated from an earlier period of ineligibility, was notified of his 1999 annual assessment obligation, failed to make timely payment, was again declared ineligible to practice law, and continued to perform legal

work for two clients; he had received a prior reprimand for unrelated violations); In re Kronegold, 164 N.J. 617 (2000) (attorney reprimanded for practicing law while ineligible; an aggravating factor was the attorney's lack of candor to the DRB about other attorneys' use of his name on complaints and letters and about the signing of his name in error); In re Namias, 157 N.J. 15 (1999) (reprimand for attorney who displayed lack of diligence, failed to communicate with a client, and practiced law while ineligible); In re Alston, 154 N.J. 83 (1998) (reprimand for attorney who practiced law while ineligible, failed to maintain a bona fide office, and failed to cooperate with disciplinary authorities); In re Armor, 153 N.J. 358 (1998) (reprimand for attorney who exhibited gross neglect, failed to communicate with a client, failed to maintain a bona fide office, and practiced law while ineligible); and In re Maiorello, 140 N.J. 320 (1995) (reprimand for attorney who practiced law while ineligible, failed to maintain proper trust and business account records in nine matters, and exhibited a pattern of neglect, lack of diligence, and failure to communicate with clients in six of the matters).

We find that respondent's conduct is most similar to that of attorney Kronegold, who received a reprimand for practicing while ineligible and for lacking candor toward this Board. Thus, we find that a reprimand is the appropriate discipline for this respondent.

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  
William J. O'Shaughnessy, Chair

By: Julianne K. DeCore  
Julianne K. DeCore  
Chief Counsel

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SUPREME COURT OF NEW JERSEY  
DISCIPLINARY REVIEW BOARD  
VOTING RECORD

In the Matter of Lori A. Kaniper  
Docket No. DRB 07-029

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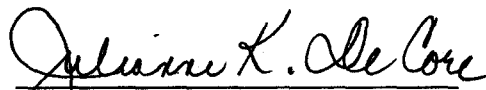
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Argued: March 15, 2007

Decided: May 24, 2007

Disposition: Reprimand

Members	Disbar	Suspension	Reprimand	Dismiss	Disqualified	Did not participate
O'Shaughnessy			X			
Pashman			X			
Baugh			X			
Boylan			X			
Frost			X			
Lolla			X			
Neuwirth			X			
Stanton			X			
Wissinger			X			
Total:			9			

  
Julianne K. DeCore  
Chief Counsel