

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 07-164
District Docket No. XIV-07-159E

IN THE MATTER OF
JAMES D. NICHOLS
AN ATTORNEY AT LAW

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Decision

Argued: October 18, 2007

Decided: November 29, 2007

Lee Gronikowski 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 admitted that he violated RPC 5.5(a) when he practiced law while ineligible for failure to pay the annual assessment to the New Jersey Lawyers' Fund for Client Protection

(the Fund). The OAE recommends a reprimand. We agree with that recommendation.

Respondent was admitted to the New Jersey bar in 1971. At the relevant times, he maintained a law office in North Brunswick, New Jersey.

In 1984, respondent was reprimanded for entering into a business transaction with a client without observing the safeguards of the conflict of interest rules, and for engaging in conduct involving deceit and misrepresentation. Specifically, respondent agreed to purchase a house from an individual whom he was representing at the time. Prior to becoming the property's rightful owner, respondent leased it and collected the rents, without the client's knowledge. This lack of disclosure was compounded by respondent's misrepresentation to the tenant that he owned the property. In re Nichols, 95 N.J. 126 (1984).

In 2005, respondent was again reprimanded, this time for gross neglect and lack of diligence in two immigration matters, failure to communicate with a client, and failure to return an unearned fee. In re Nichols, 182 N.J. 433 (2005).

The facts of this matter are as follows:

On March 21, 2007, the OAE received a letter from Middlesex County Assistant Prosecutor Brian Gillet, stating that, while he was attempting to locate respondent's telephone number to discuss

a case, he discovered that respondent had been ineligible to practice law since September 25, 2006. Pursuant to RPC 8.3 (a) (requiring the referral of an attorney's improper conduct to the proper authorities), Gillet referred the matter to the OAE.

On March 26, 2007, the OAE wrote to respondent seeking an explanation for his conduct. By letter dated March 28, 2007, respondent explained to the OAE that he had been unaware of his ineligibility until so notified by the Middlesex County Prosecutor's Office; that he, thereafter, had contacted the Fund to determine the extent of his obligation; and that, on March 23, 2007, he had remitted a \$458 check to the Fund. He sent the OAE a copy of the Fund's March 30, 2007 letter stating that he had been removed from the 2006 ineligible list and was in active status.

Respondent stipulated that his conduct violated RPC 5.5 (a).

Following a review of the record, we find that the stipulation contains clear and convincing evidence of respondent's unethical conduct. Admittedly, he practiced law during a period of ineligibility for failure to pay the annual attorney assessment to the Fund.

Practicing law while ineligible is generally met with an admonition if that is the attorney's sole violation and the attorney is unaware of his ineligible status, or if the attorney also commits other, non-serious ethics infractions, but advances

compelling mitigating factors. See, e.g., In the Matter of Frank D. DeVito, DRB 06-116 (July 21, 2006) (attorney practiced law while ineligible, failed to cooperate with the OAE, and committed recordkeeping violations; compelling mitigating factors, including the attorney's lack of knowledge of his ineligibility, justified only an admonition); In the Matter of Queen Esther Payton, DRB 05-250 (November 3, 2005) (during an eleven-month period of ineligibility, the attorney practiced law with her husband on a limited, part-time basis, conducting legal research, calling clients and doing "paperwork" in the office; the attorney initially failed to cooperate with the OAE's investigation of the matter; mitigating factors taken into account); In the Matter of Steven V. Podolsky, DRB 05-187 (September 19, 2005) (attorney practiced law while ineligible; the attorney's conduct was confined to one instance; the attorney did not know of his ineligibility); In the Matter of Richard J. Cohen, DRB 04-209 (July 16, 2004) (attorney practiced law during nineteen-month ineligibility; the attorney did not know that he was ineligible); In the Matter of William N. Stahl, DRB 04-166 (June 22, 2004) (attorney practiced law while ineligible and failed to maintain a trust and a business account; specifically, the attorney filed a complaint on behalf of a client and made a court appearance on behalf of another client; mitigating factors were the attorney's

lack of knowledge of his ineligibility, his prompt action in correcting his ineligibility status, and the absence of self-benefit; in representing the clients, the attorney was moved by humanitarian reasons); In the Matter of Samuel Fishman, DRB 04-142 (June 22, 2004) (attorney, while ineligible to practice law, represented one client in a lawsuit and signed a retainer agreement in connection with another client matter; the attorney also failed to maintain a trust and a business account; mitigating factors were the attorney's lack of knowledge of his ineligibility, his contrition at the hearing, his quick actions to remedy the recordkeeping deficiency, and the lack of disciplinary history); In the Matter of Douglas F. Ortelere, DRB 03-377 (February 11, 2004) (attorney practiced law while ineligible, failed to communicate with the client, and delayed the payment of the client's medical expenses as well as the disbursement of the client's share of settlement proceeds; in mitigation, the attorney was suffering from depression at the time of the misdeeds and had no disciplinary history since his admission to the bar twenty years before); In the Matter of Juan A. Lopez, Jr., DRB 03-353 (December 1, 2003) (attorney practiced law while ineligible for nine months; the attorney was not aware that he was ineligible; prior admonition); In the Matter of Judith E. Goldenberg, DRB 01-449 and 01-450 (March 22, 2002)

(attorney, while ineligible to practice law, made two appearances before an immigration court; the attorney also lacked diligence in handling one matter; the attorney was unaware of her ineligibility, believing that her law firm had paid the assessment); In the Matter of Joseph V. Capodici, DRB 00-294 (November 21, 2000) (during a period of ineligibility, attorney accepted a \$100 payment toward a \$200 fee; prior reprimand); and In the Matter of Kevin B. Thomas, DRB 00-161 (July 26, 2000) (attorney appeared in court twice while ineligible to practice law; in mitigation, the attorney was closing down his practice and no longer had any staff who was responsible for paying the annual assessment).

A reprimand is usually imposed when the attorney is aware of the ineligibility and practices law nevertheless, or has a significant ethics history, or has also committed other, serious ethics improprieties. See, e.g., In re Davis, N.J. (2007) (motion for reciprocal discipline; attorney represented a client in Pennsylvania when the attorney was ineligible to practice law in that jurisdiction as a non-resident active attorney, and later, as an inactive attorney; the attorney also misrepresented his status to the court, to his adversary, and to disciplinary authorities; extensive mitigation considered); In re Kaniper, 192 N.J. 40 (2007) (attorney practiced law during two periods of

ineligibility; although the attorney's employer gave her a check for the annual attorney assessment, she negotiated the check instead of mailing it to the Fund; later, her personal check to the Fund was returned for insufficient funds; the attorney's excuses that she had not received the Fund's letters about her ineligibility were deemed improbable and viewed as an aggravating factor); In re Coleman, 185 N.J. 280 (2005) (motion for reciprocal discipline; attorney who was ineligible to practice law in Pennsylvania for nine years signed hundreds of pleadings and received in excess of \$7,000 for those services; the attorney was aware of his inactive status; he also displayed lack of candor in the course of the Pennsylvania disciplinary proceedings); In re Perrella, 179 N.J. 499 (2004) (attorney advised his client that he was on the inactive list and then practiced 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) (for a period of twelve years, the attorney practiced law in Pennsylvania while on the inactive list; compelling mitigating factors considered); In re Lucid, 174 N.J. 367 (2002) (practiced 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) (attorney practiced law while ineligible and failed 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) (one month after being reinstated from an earlier period of ineligibility, the attorney 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) (practiced law while ineligible; an aggravating factor was the attorney's lack of candor to the us about other attorneys' use of his name on complaints and letters and about the signing of his name in error); and In re Armorer, 153 N.J. 358 (1998) (attorney practiced law while ineligible, exhibited gross neglect, failed to communicate with a client, and failed to maintain a bona fide office). But see In


re Lynch, 186 N.J. 246 (2006) (censure for attorney who, aware of his ineligibility, practiced law during that period; the attorney had a prior admonition and a reprimand).

Here, because respondent's only violation was practicing law while ineligible and because he was unaware of his ineligibility, an admonition might be viewed as appropriate. Under established precedent, however, his two prior reprimands take this case out of the admonition category and justify a reprimand. But see In the Matter of William C. Brummel, DRB 06-031 (March 21, 2006) (admonition for attorney who practiced law during a four-month period of ineligibility; the attorney was unaware of his ineligibility; prior private reprimand in 1999 and reprimand in 2002).

Member Lolla 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
William J. O'Shaughnessy, Esq.

By: 
for Julianne K. DeCore
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

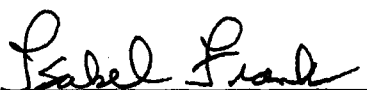
In the Matter of James D. Nichols
Docket No. DRB 07-164

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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:			8			1

By 
Julianne K. DeCore
Chief Counsel