

SUPREME COURT OF NEW JERSEY  
Disciplinary Review Board  
Docket No. DRB 03-155

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IN THE MATTER OF  
THEODORE KOZLOWSKI  
AN ATTORNEY AT LAW

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Decision  
Default [R. 1:20 4(f)]

Decided: August 27, 2003

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

Pursuant to R.1:20-4(f), the District X Ethics Committee (“DEC”) certified the record in this matter directly to us for the imposition of discipline, following respondent’s failure to file an answer to the formal ethics complaint.

The complaint alleged that respondent practiced law while ineligible to do so for failure to pay the annual attorney assessment to the New Jersey Lawyers’ Fund for Client Protection (“CPF”).

Respondent was admitted to the New Jersey bar in 1978. On May 28, 1992, respondent was privately reprimanded for lack of diligence and failure to cooperate with

ethics authorities. In the Matter of Theodore Kozlowski, Docket No. DRB 92-104. On February 18, 1998, he received an admonition for lack of diligence and failure to communicate with the client in two matters. In the Matter of Theodore Kozlowski, Docket No. DRB 96-460.

This matter arose out of respondent's failure to pay the 2001 annual assessment to the CPF. As a result, his name appeared on the Supreme Court's September 21, 2001 list of attorneys ineligible to practice law for failure to pay the CPF assessment for that year.

Respondent paid the outstanding assessment and, on or about March 22, 2002, his name was removed from the CPF list. In a letter to the DEC investigator, respondent admitted that he had failed to pay the 2001 assessment, but claimed that he was unaware that his name was on the CPF list of ineligible attorneys. He further admitted that he had continued to practice law during the period of his ineligibility, from September 21, 2001 to March 22, 2002.

The complaint charged respondent with a violation of RPC 5.5(a) (unauthorized practice of law).

On February 14, 2003, the DEC sent a copy of the complaint to respondent's last known office address listed in the New Jersey Lawyers' Diary and Manual, 20 Park Place, Suite 200, Morristown, New Jersey, 07960, by certified and regular mail. The certified mail receipt was returned signed by "Dorothy George" on or about February 25, 2003. The whereabouts of the regular mail is not known.

On March 28, 2003, the DEC sent a second letter to the above address, by certified and regular mail, advising respondent that, if he did not file an answer to the complaint within five days, the record would be certified directly to us for the imposition of discipline. The certified mail receipt was returned signed by Dorothy George on April 1, 2003. Again, the certification is silent about the regular mail.

Respondent did not file an answer.

On June 11, 2003, respondent filed a motion to vacate default. In order to vacate default matters, a respondent must overcome a two-pronged test. First, a respondent must offer a reasonable explanation for his/her failure to answer the ethics complaint. Second, a respondent must assert a meritorious defense to the underlying charges.

As to his failure to answer the ethics complaint, respondent claimed that he missed the deadline because his son was diagnosed with juvenile diabetes on February 9, 2003. Thereafter, respondent and his wife (who also acted as his secretary) spent six full days in training to understand the disease. However, as amplified in the DEC's June 12, 2003, letter reply to us in opposition to the motion to vacate, respondent was served with the complaint on or about February 25, 2003. On or about April 1, 2003, he received a "five-day letter." Respondent did not reply to either of those DEC inquiries. We determined that, notwithstanding the unfortunate personal problems associated with his son's condition, respondent had ample time to either reply to the DEC or ask for additional time. Respondent did not do so.

With regard to the meritorious defense requirement, respondent had no defense to the charge, again admitting that he had practiced law while ineligible to do so. Rather, he offered in mitigation that he was unaware, at the time, that his name had appeared on the Supreme Court's September 21, 2001, list of attorneys ineligible to practice law for failure to pay the CPF assessment for that year. As soon as he became aware of it, he said, he paid the assessment.

Respondent's case to vacate default was not compelling. He was given ample time to file an answer to the complaint or request more time to do so, family problems notwithstanding. Moreover, he had no defense to the underlying charge. We, therefore, denied the motion to vacate default.

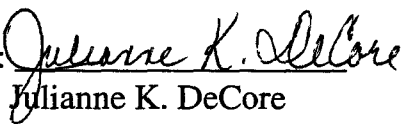
Service of process was properly made. Following a review of the record, we found that the facts recited in the complaint support the charges of unethical conduct. Because of respondent's failure to file an answer, the allegations of the complaint are deemed admitted. R.1:20-4(f).

Ordinarily, attorneys who practice law while ineligible will receive an admonition, if no other misconduct is present. In the Matter of Jerald D. Baranoff, Docket No. DRB 00-258 (October 25, 2000) (admonition imposed where the attorney, although ineligible to practice law for failure to pay the annual attorney assessment, appeared at an administrative hearing on behalf of a client); In the Matter of Joseph V. Capodici, Docket No. DRB 00-294 (November 21, 2000) (admonition imposed where the attorney accepted money to represent a

client while ineligible to practice law for failure to pay the annual attorney assessment); and In the Matter of Jonathan H. Kranzler, Docket No. DRB 00-286 (November 21, 2000) (admonition imposed where the attorney accepted representation and filed a complaint in a matter in 1996, notwithstanding the fact that he was ineligible to practice law for failure to pay the annual attorney assessment). We unanimously determined that, because of respondent's disciplinary history (a private reprimand and an admonition) and the default nature of this matter, a reprimand was required.

We also determined to require respondent to reimburse the Disciplinary Oversight Committee for administrative expenses.

Disciplinary Review Board  
Mary J. Maudsley, Chair

By:   
Julianne K. DeCore  
Acting Chief Counsel

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**SUPREME COURT OF NEW JERSEY  
DISCIPLINARY REVIEW BOARD  
VOTING RECORD**

In the Matter of Theodore Kozlowski  
Docket No. DRB 03-155

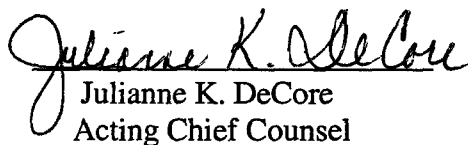
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Decided: August 27, 2003

Disposition: Reprimand

<i>Members</i>	<i>Disbar</i>	<i>Suspension</i>	<i>Reprimand</i>	<i>Admonition</i>	<i>Dismiss</i>	<i>Disqualified</i>	<i>Did not participate</i>
<i>Maudsley</i>			X				
<i>O'Shaughnessy</i>			X				
<i>Boylan</i>			X				
<i>Holmes</i>			X				
<i>Lolla</i>			X				
<i>Pashman</i>			X				
<i>Schwartz</i>			X				
<i>Stanton</i>			X				
<i>Wissinger</i>			X				
<b>Total:</b>			9				

  
Julianne K. DeCore  
Acting Chief Counsel