

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 08-300
District Docket No. XIV-07-0466E

IN THE MATTER OF
PETER E. MANOLAKIS
AN ATTORNEY AT LAW

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Decision

Argued: November 20, 2008

Decided: December 9, 2008

Christina Blunda Kennedy appeared on behalf of the Office of Attorney Ethics.

Respondent did not appear for oral argument, despite proper notice.

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 respondent and the Office of Attorney Ethics ("OAE"). It stems from respondent's practicing law while ineligible to do so for failure to pay the annual attorney assessment to the New Jersey Lawyers' Fund for Client Protection ("the CPF") and failure to cooperate with the OAE. The OAE recommends a

reprimand. We determine to impose a censure.

Respondent was admitted to the New Jersey bar in 1987. He has no prior discipline.

From September 26, 2005 to March 22, 2007, respondent was ineligible to practice law for failure to pay his attorney registration fee to the CPF.¹ In correspondence to the OAE, dated December 24, 2007, respondent admitted that he had practiced law during that time.

Respondent explained to the OAE that, during that period, he was preoccupied with caring for his elderly mother and, therefore, did not realize that he had not paid the fee. According to respondent, he was required to spend considerable amounts of time caring for his mother. In May 2006, respondent's mother was hospitalized. She died in the hospital in October of that year.

In his letter to the OAE, respondent assured that office that

the period of ineligibility was solely due to the above circumstances and my admitted failure to stay on top of everything during those difficult times. I did not actually realize that I was on the ineligible list and did not intentionally practice law in disregard of the Rules of the Court. I regret my failure and apologize for it unconditionally.

[1DS¶15;1DS.Ex.2.]²

¹ According to the CPF records, respondent again became ineligible to practice law on September 29, 2008.

² 1DS denotes the portion of the disciplinary stipulation that addresses respondent's practicing law while ineligible.

A schedule of transactions for respondent's eighteen-month period of ineligibility shows that there were fifty-one deposits to his trust account and 192 disbursements, totaling \$4.2 million and \$3.9 million, respectively. Respondent's business account statements showed 109 deposits and 425 disbursements, amounting to \$125,000 and \$119,000, respectively.

Respondent stipulated that his conduct violated RPC 5.5(a) (unauthorized practice of law).

Respondent also stipulated a violation of RPC 8.1(b) (failure to cooperate with disciplinary authorities). Specifically, on September 25, 2007, the OAE sent him a letter, inquiring whether he had practiced law while ineligible. On October 19, 2007, respondent asked that he be given fifteen days to "retrieve and review his information and respond" He was granted an extension to October 31, 2007.

On November 2, 2007, respondent requested that the deadline be extended to November 15, 2007. The stipulation is silent on whether his request was granted.

By letter dated December 17, 2007, the OAE asked that respondent reply "immediately" to its September 25, 2007 letter. Respondent promised a reply by December 24, 2007. As indicated previously, on that date, respondent sent the OAE a letter, admitting that he had practiced law between September 26, 2005 and

March 22, 2007.

On December 28, 2007, the OAE requested that respondent produce copies of his trust and business account records for the eighteen-month period of ineligibility. On January 9, 2008, respondent faxed a letter to the OAE, indicating that the bank statements were enclosed with the mailed copy of his letter. They were not, however.

On February 15, 2008, the OAE faxed a letter to respondent, noting that the statements were not included with his letter and renewing its request that they be forwarded to that office as soon as possible. The stipulation does not reveal whether respondent complied with that request.

On March 10, 2008, the OAE scheduled a demand audit of respondent's attorney records. The audit was to take place at respondent's office on March 27, 2008.

On the day of the audit, the OAE went to respondent's office, but no one answered the doorbell or knocking on the door. The OAE investigators waited outside of respondent's office until 11:00 a.m., to no avail. They left a business card at the door, with a request that respondent contact the OAE as soon as possible. A voicemail message was also left on respondent's office phone. Later that day, respondent left a voicemail message at the OAE, stating that he was out of town and had forgotten about the audit.

On April 2, 2008, the OAE sent a letter to respondent, re-scheduling the demand audit for April 8, 2008, at the OAE's office. On April 3, 2008, the OAE received a letter from respondent, enclosing his trust and business account statements. Respondent notified the OAE that he would not be available for the audit because he was going to be out of the office until April 16, 2008. As of the date of the stipulation, August 4, 2008, the demand audit had not been re-scheduled.

The only mitigating factor cited in the stipulation is respondent's lack of a disciplinary record.

The OAE contends that a reprimand is warranted because of the length of time that respondent practiced law while ineligible, "the substantial size of his practice during that period and the fact that he did not cooperate with the OAE investigator."

Following a review of the record, we find that the facts recited in the stipulation clearly and convincingly establish violations of RPC 5.5(a) and RPC 8.1(b). For a period of eighteen months, respondent practiced law while ineligible. He also failed to promptly comply with the OAE's requests for information and to produce the requested attorney records for the OAE's inspection. The sole issue left for determination is the measure of discipline for respondent's infractions.

Attorneys who practice law during an ineligibility period and

are unaware that they are ineligible typically receive admonitions. See, e.g., In the Matter of William C. Brummel, DRB 06-031 (March 21, 2006) (attorney practiced law during a four-month period of ineligibility; the attorney was unaware of his ineligible status); 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 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) (while ineligible to practice law, attorney 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 action in remedying the recordkeeping deficiency, and the lack of

disciplinary history); 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); and In the Matter of Judith E. Goldenberg, DRB 01-449 and 01-450 (March 22, 2002) (while ineligible to practice law, attorney made two appearances before an immigration court; the attorney also lacked diligence in handling one matter; the attorney was unaware of her ineligibility).

Here, too, respondent was unaware that he was ineligible, when he practiced law between September 26, 2005 and March 22, 2007. Although that period was lengthy -- eighteen months -- one of the above attorneys, Richard Cohen, practiced for nineteen months and still received an admonition. Therefore, an admonition might have been sufficient discipline here as well, particularly because respondent's preoccupation with his mother's illness prevented him from realizing that he had not paid the CPF.

Respondent's conduct was not limited, however, to practicing while ineligible. He also failed to cooperate with the OAE. Despite having been granted at least one extension to reply to the OAE's letter of September 25, 2007, asking whether he had practiced while ineligible, respondent did not adhere to the extended deadline for the submission of a reply. He also did not comply with the OAE's requests and/or demands for the review of

his attorney records. On one occasion, respondent informed the OAE that the records were attached to one of his letters. They were not. On another occasion, OAE personnel traveled to respondent's office to conduct a scheduled audit, but respondent was not there. He claimed that he had forgotten about the audit. The audit was re-scheduled for another day. Once again, respondent did not make himself available. He notified the OAE that he would be out of the office on the re-scheduled date and the week thereafter.

Generally, admonitions are imposed for failure to cooperate with disciplinary authorities. See, e.g., In the Matter of Kevin R. Shannon, DRB 04-512 (June 22, 2004) (attorney did not promptly reply to the district ethics committee's 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 ethic 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).

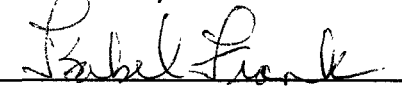
We view respondent's failure to cooperate with the OAE as more serious than that of the attorneys who received admonitions. It was not an isolated incident. It constituted a pattern. On several occasions, respondent frustrated the OAE's efforts to conduct an inspection of his records to determine if further improprieties had occurred. Therefore, a reprimand, rather than an admonition, would be more in keeping with the extent of his failure to cooperate with the OAE investigation.

For the combination of respondent's transgressions, that is, practicing law while ineligible and failing to cooperate with disciplinary authorities, we determine to impose a censure.

Member Stanton 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: 
for Julianne K. DeCore
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

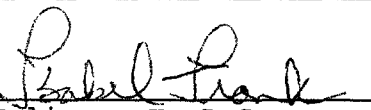
In the Matter of Peter E. Manolakis
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Disposition: Censure

Members	Disbar	Suspension	Censure	Dismiss	Disqualified	Did not participate
Pashman			X			
Frost			X			
Baugh			X			
Boylan			X			
Clark			X			
Doremus			X			
Lolla			X			
Stanton						X
Wissinger			X			
Total:			8			1


for Julianne K. DeCore
Chief Counsel