

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 16-252
District Docket No. VB-2015-0013E

IN THE MATTER OF
SEAN R. SEXTON
AN ATTORNEY AT LAW

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Decision

Decided: April 12, 2017

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 VB Ethics Committee (DEC) pursuant to R. 1:20-4(f). The two-count amended complaint charged respondent with violations of RPC 5.5(a)(1) (practicing law while ineligible) and RPC 8.1(b) (failure to comply with lawful requests for information from a disciplinary authority). For the reasons set forth below, we determine to impose a censure.

Respondent was admitted to the New Jersey bar in 2004. He maintained a law office in Jersey City, New Jersey. He has no history of discipline. The attorney registration records list him as ineligible to practice in 2008 and 2010, and continuously since 2013, for failure

to pay his annual assessment to the New Jersey Lawyers' Fund for Client Protection (Fund).

Service of process was proper in this matter. On November 30, 2015, the DEC sent copies of the complaint by regular and certified mail to respondent's last known office address listed in the attorney registration records, to another Jersey City address, and to a Bayonne, New Jersey address.

The regular mail sent to respondent's office address was not returned. The certified mail was returned marked "return to sender, unclaimed."

The regular mail sent to the other Jersey City address was returned marked "return to sender, not deliverable as addressed, unable to forward." The certified mail sent to this address was also returned with the same notation.

The regular mail sent to the Bayonne address was returned marked "return to sender, attempted - not known, unable to forward." The certified mail sent to this address was returned, marked "addressee unknown."

On January 25, 2016, the Office of Attorney Ethics (OAE) provided the DEC with a fourth address at which to attempt service on respondent. On February 12, 2016, the DEC forwarded a copy of an amended complaint, by regular and certified mail, to respondent at that additional address.

Both the regular and certified mail were returned marked "no longer at this address."

The DEC, thereafter, effected service of the amended complaint by publication, on May 2, 2016, in the New Jersey Law Journal and, on May 13, 2016, in The Star-Ledger.

As of the date of the certification of the record, June 3, 2016, respondent had not filed an answer to the amended ethics complaint.

According to the amended complaint, respondent was on the IOLTA list of ineligible attorneys in 2008 and from 2010 through 2015; the Fund's list of ineligible attorneys from 2010 through 2015,¹ and has been "administratively ineligible" to practice law for several years, presumably, for not fulfilling his continuing legal education requirements.

Respondent did not provide the OAE with valid contact information. Thus, correspondence that the DEC sent to the address listed in the OAE's records was returned. The DEC's attempts to telephone respondent were also unavailing. The DEC, therefore, was unable to serve respondent with the grievance.

Respondent is also licensed to practice law in New York. The address he provided to New York officials is different from the address listed in the New Jersey attorney registration records, but is the same

¹ As noted above, the attorney registration records show that respondent paid his annual registration assessment in 2009, 2011, and 2012.

as the fourth address, which the Office of Attorney Ethics provided to the District Ethics Committee.

Despite respondent's ineligibility, on April 16, 2015, he represented a client in a domestic violence case in Superior Court of New Jersey, Hudson County. The Honorable Mark A. Barber, J.S.C., presiding over the matter, referred respondent to the District VI Ethics Committee. The referral was forwarded to District VB for investigation.

The complaint, thus, charged respondent with violating RPC 5.5(a)(1) for representing a client while ineligible.

The complaint alleged further that respondent "failed to provide up-to-date and accurate contact information that would allow for prompt and reliable communication in a manner consistent with the requirements" set forth at R. 1:21-1(a)(1).² Respondent's violation of this rule prevented authorities from communicating with him and "hindered and impeded" the DEC's prompt investigation and resolution

² This rule provides that an attorney must structure his or her practice to assure prompt and reliable communication with and accessibility by clients, counsel, and judicial and administrative tribunals before which the attorney may practice, and that an attorney

must designate one or more fixed physical locations where client files and the attorney's business and financial records may be inspected on short notice by duly authorized regulatory authorities, where mail or hand-deliveries may be made and promptly received, and where process may be served on the attorney for all actions, including disciplinary actions

of a disciplinary matter. Thus, the complaint charged that respondent's failure to comply with R. 1:21-1(a)(1) violated RPC 8.1(b).

* * *

The facts recited in the complaint support the charges of unethical conduct. 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. R. 1:20-4(f)(1).

The alleged facts clearly and convincingly establish that respondent practiced law while ineligible in one matter. In April 2015, he represented a client while on the Fund's and IOLTA's list of ineligible attorneys, and while administratively ineligible to practice for not complying with his continuing legal education obligations.

Respondent's failure to adhere to the requirements of R. 1:21-1(a)(1), however, is more properly a violation of RPC 3.4(c) (knowingly disobeying an obligation under the rules of a tribunal) or RPC 8.4(d) (conduct prejudicial to the administration of justice). RPC 8.1(b) is inapplicable because the complaint itself did not set forth any facts asserting that respondent failed to reply to a lawful demand for information, rather only that his failure to comply with R. 1:21-1(a)(1) "hindered and impeded prompt investigation and resolution of a disciplinary matter." Therefore, we do not find a violation of RPC

8.1(b) for respondent's failure to keep the proper authorities informed of his address.

Practicing law while ineligible, without more, is generally met with an admonition if the attorney is either unaware of the ineligibility or advances compelling mitigating factors. See, e.g., In the Matter of Robert Blackman, DRB 10-137 (June 18, 2010) (attorney practiced law while ineligible for failure to file the IOLTA registration statement for three years; he did not know of his ineligibility); In the Matter of Matthew George Connolly, DRB 08-419 (March 31, 2009) (attorney practiced law while ineligible for failure to pay his annual attorney assessment; the conduct was unintentional as the attorney was not aware that his office failed to pay the assessment; when it came to his attention, he immediately cured the problem); In the Matter of William C. Brummell, DRB 06-031 (March 28, 2006) (attorney practiced law during a four-month period of ineligibility; the attorney was unaware of his ineligibility and promptly took action to correct the problem); and 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 imposing only an admonition).

Either a reprimand or a censure is imposed when aggravating factors exist. See, e.g., In re Moskowitz, 215 N.J. 636 (2013) (reprimand for attorney who was ineligible to practice for approximately seven months, and was aware of his ineligibility when he appeared for trial in an estate matter and filed various pleadings with the court; the mitigating factors offered by the attorney were not sufficiently compelling to reduce the discipline); In re Jay, 210 N.J. 214 (2012) (reprimand imposed on attorney who was aware of his ineligibility but practiced law, nevertheless; prior three-month suspension for possession of cocaine and marijuana); In re (Queen) Payton, 207 N.J. 31 (2011) (reprimand for attorney who was aware of her ineligibility and who practiced law, nevertheless; prior admonition for the same violation); In re Austin, 198 N.J. 599 (2009) (reprimand; during a one-year period of ineligibility, the attorney made three court appearances on behalf of an attorney-friend who was not admitted in New Jersey and received a \$500 fee for each matter; the attorney knew he was ineligible; he also did not maintain a New Jersey trust or business account, but misrepresented on his annual registration form that he did); In re Glasser, 222 N.J. 26 (2015) (censure in a default for attorney who represented a client in an immigration matter while ineligible for failure to pay the annual assessment for seven years (her license had been administratively revoked), failed to memorialize the basis or rate of the fee, failed to adequately communicate with the

client, failed to take any action in the case, failed to return the file and the retainer, and failed to reply to the district ethics committee's several requests for a reply to the grievance); and In re Block, 220 N.J. 33 (2014) (censure in a default, for attorney who knowingly practiced law while ineligible by representing clients in three different municipal courts; he also failed to reply to the grievance, despite having been afforded a number of extensions to do so; knowledge of the ineligibility was inferred based on a number of factors including the attorney's failure to pay the annual assessment for five years; prior reprimand for the same violation).


Similar to the Block matter, we infer respondent's knowledge of ineligibility based on his failure to comply with his administrative responsibilities to keep his license active for extended periods. Thus, a reprimand is the starting point for discipline in this matter. Respondent's conduct is aggravated by his failure to update his attorney registration contact information, thereby preventing disciplinary authorities from communicating with him. Because respondent defaulted, there are no mitigating factors to consider that would reduce the discipline to an admonition. To the contrary, when an attorney defaults in a matter, the discipline is enhanced. In re Kivler, 193 N.J. 332, 342 (2008) ("a respondent's default or failure to cooperate with the investigative authorities operates as an aggravating factor, which is sufficient to permit a penalty that would otherwise be appropriate to

be further enhanced"). Under these circumstances, we determine that a censure is warranted for respondent's misconduct.

Members Boyer and Singer voted to impose a reprimand.

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
Bonnie C. Frost, Chair

By: 
Ellen A. Bredsky
Chief Counsel


SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Sean R. Sexton
Docket No. DRB 16-252

Decided: April 12, 2017

Disposition: Censure

Members	Censure	Reprimand	Did not participate
Frost	X		
Baugh	X		
Boyer		X	
Clark	X		
Gallipoli	X		
Hoberman	X		
Rivera	X		
Singer		X	
Zmirich	X		
Total:	7	2	


Ellen A. Brodsky
Chief Counsel