

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. 17-110
District Docket No. VC-2014-0003E

IN THE MATTER OF
BRYAN BLANEY
AN ATTORNEY AT LAW

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Decision

Decided: September 15, 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 VC Ethics Committee (DEC), pursuant to R. 1:20-4(f). The two-count formal ethics complaint charged respondent with having violated RPC 5.5(a) (practicing while ineligible) and RPC 8.1(b) (failure to cooperate with disciplinary authorities). We dismiss the RPC 8.1(b) charge, and impose a reprimand on respondent for his violation of RPC 5.5(a).

Respondent was admitted to the New Jersey bar in 1987, the New York bar in 1988, and the District of Columbia bar in 1990. At the relevant times, he maintained an office for the practice of

law in Montclair. Respondent has no disciplinary history in New Jersey.

Service of process was proper. On June 9, 2016, the DEC sent a copy of the formal ethics complaint to respondent's home and office address, as reflected in the Central Attorney Management System (CAMS), by regular and certified mail, return receipt requested. The receipt for the certified letter sent to respondent's office address was returned bearing an illegible signature, but confirming delivery on June 10, 2016. The record is silent in respect of whether the letter sent by certified mail to respondent's home address was delivered and whether the letters sent to both addresses by regular mail were returned.

As of March 17, 2017, respondent had not filed an answer to the complaint. Accordingly, on that date, the DEC certified this matter to us as a default.

The formal ethics complaint alleged that, in 2011, respondent was an attorney at the law firm of Norris, McLaughlin. At some point during that year, the Court entered an Order declaring him ineligible to practice law, based on his nonpayment of the annual attorney assessment to the New Jersey Lawyers' Fund for Client Protection (CPF). Respondent paid the fee on November 7, 2011 and, presumably, returned to eligible status.

In April 2012, respondent left Norris, McLaughlin and opened his own law firm, which was located in Montclair. In May or June of that year, he informed the CPF of his new address.

In 2012, the Court again entered an Order declaring respondent ineligible to practice, based on his nonpayment of the annual attorney assessment to the CPF. On October 10, 2012, he paid the fee, and, presumably, returned to eligible status.

On September 25, 2013, and for the third straight year, the Court entered an Order declaring respondent ineligible, due to nonpayment of the annual attorney assessment to the CPF. On September 30, 2013, the Court's Order was published in the New Jersey Law Journal. On October 8, 2013, the CPF mailed the Order to respondent's Montclair office address.

Despite the Court's Order declaring respondent ineligible, on September 25, 2013, he continued to practice law through January 28, 2014, when he learned of his ineligibility. Respondent paid the outstanding fee immediately and became eligible on January 31, 2014.

Based on these facts, the DEC filed a complaint charging respondent with having violated RPC 5.5(a) and R. 1:28-2.¹ However,

¹ R. 1:28-2(a) requires attorneys licensed to practice law in this State to pay annually to the CPF "a sum that shall be determined each year by the Supreme Court."

the complaint alleged a single fact, suggesting a defense on respondent's behalf.

Specifically, in August 2013, respondent "received a notice that he mistakenly believed was for his annual registration and the Lawyers' Fund fee and he paid \$100 instead of the appropriate fee." Thus, respondent was of the view that he had paid the assessment and so informed the CPF. After respondent was assured by the CPF that he had not, he searched his records and located a copy of a \$100 attorney business account check, issued to the State Treasurer, on August 6, 2013. According to respondent, that check represented payment for "re-listing of [his] bar registration." Although the purpose of the \$100 check is not identified in the complaint, it was not issued to the CPF, and it was not in the amount of the annual fee in effect at that time.

In respondent's written reply to the grievance, he asserted:

Because I had previously only worked in private practice with firms, and had not been required to make payments to the fund, or for registration, I can only assume that I mistakenly confused he [sic] two separate payments, and thought that I had paid my Lawyer's fund [sic] payment. It was, to be sure, my mistake in my understanding of what was due. It was not, however, an effort to avoid a payment due.

[Ex.J2.]

Thus, respondent argued, his failure to pay the annual fee was "not a knowing, or intentional effort to avoid [his] obligation." He returned to eligible status on January 31, 2014.

The second count of the complaint charged respondent with having violated RPC 8.1(b), based on his breach of a 2014 agreement in lieu of discipline. Specifically, respondent failed to comply with his obligation to attend a continuing legal education program on April 1, 2015. Even after he was given a second chance, respondent failed to attend the program.

* * *

Respondent's failure to file an answer to the complaint is deemed an admission that the allegations are true and that they provide a sufficient basis for the imposition of discipline. R. 1:20-4(f)(1). Notwithstanding that Rule, each charge must be supported by sufficient facts for us to determine that unethical conduct has occurred. Here, the facts recited in the complaint support only one of the charges of unethical conduct.

RPC 5.5(a)(1) prohibits a lawyer from practicing law in a jurisdiction "where doing so violates the regulation of the legal profession in that jurisdiction." Respondent admitted practicing law during the 2013-14 period of ineligibility. Thus, his conduct violated RPC 5.5(a)(1).

RPC 8.1(b) prohibits an attorney from "knowingly fail[ing] to respond to a lawful demand for information from . . . [a] disciplinary authority." Violations of this Rule typically involve an attorney's failure to file a written reply to the grievance or to provide requested documents. See, e.g., In the Matter of Jaime Merrick Kaigh, DRB 16-282 (March 31, 2017) (slip op. at 5-6) (failure to submit a written reply to the grievance), and In the Matter of Peter A. Cook, DRB 16-243 (March 30, 2017) (slip op. at 19-21) (failure to produce requested documents).

The breach of an agreement in lieu of discipline does not constitute a violation of RPC 8.1(b). Rather, under R. 1:20-3(i)(3)(A), the breach converts what had been considered minor unethical conduct to unethical conduct, which is then prosecuted either by the filing of a complaint or some other charging document. In other words, the underlying conduct that prompted the filing of the grievance, along with respondent's admissions in connection with the agreement in lieu of discipline, become the subject of a formal complaint – not the violation of the terms of the agreement in lieu of discipline. Thus, we dismiss the RPC 8.1(b) charge.

There remains for determination the appropriate quantum of discipline to impose for respondent's violation of RPC 5.5(a)(1). Ordinarily, when an attorney practices while ineligible, an

admonition will be imposed, if he or she is unaware of the ineligibility or advances compelling mitigating factors. See, e.g., In the Matter of Jonathan A. Goodman, DRB 16-436 (March 22, 2017) (attorney practiced law during two periods of ineligibility; he was unaware of his ineligibility); In the Matter of James David Lloyd, DRB 14-087 (June 25, 2014) (attorney practiced law during an approximate thirteen-month period of ineligibility; among the mitigating factors considered was his lack of knowledge of the ineligibility); and In the Matter of Adam Kelly, DRB 13-250 (December 3, 2013) (during a two-year period of ineligibility for failure to pay the annual assessment to the CPF, the attorney handled at least seven cases that the Public Defender's Office had assigned to him; the record contained no indication that the attorney was aware of his ineligibility and he had no history of discipline since his 2000 admission to the New Jersey bar).

A reprimand is usually imposed for practicing law while ineligible, when the attorney either has an extensive ethics history, is aware of the ineligibility and practices law nevertheless, has committed other ethics improprieties, or has been disciplined for conduct of the same sort. See, e.g., In re Moskowitz, 215 N.J. 636 (2013) (attorney practiced law knowing that he was ineligible to do so).


In this case, respondent was unaware of his ineligibility, based on his mistaken belief that he had paid the 2013 assessment. Thus, had respondent not allowed this matter to proceed as a default, an admonition would be the appropriate measure of discipline for respondent's violation of RPC 5.5(a)(1).

"A respondent's default or failure to cooperate with the investigative authorities acts as an aggravating factor, which is sufficient to permit a penalty that would otherwise be appropriate to be further enhanced." In re Kivler, 193 N.J. 332, 342 (2008). Thus, we determine to impose a reprimand on respondent for his violation of RPC 5.5(a)(1).

Member Gallipoli voted to impose a censure on respondent. Vice-Chair Baugh and Members Rivera and Zmirich 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
Bonnie C. Frost, Chair

By: 
Ellen A. Brodsky
Chief Counsel


SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Bryan Blaney
Docket No. DRB 17-110

Decided: September 15, 2017

Disposition: Reprimand

Members	Reprimand	Censure	Did not participate
Frost	X		
Baugh			X
Boyer	X		
Clark	X		
Gallipoli		X	
Hoberman	X		
Rivera			X
Singer	X		
Zmirich			X
Total:	5	1	3


Ellen A. Brodsky
Chief Counsel