

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 18-121
District Docket No. XA-2015-0018E

In The Matter of
Stacy B. Fronapfel
An Attorney At Law

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Decision

Argued: June 21, 2018

Decided: October 15, 2018

Paul A. Carbon appeared on behalf of the District XA Ethics Committee.

Respondent waived appearance for oral argument.

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

This matter was before us based on a recommendation for a reprimand filed by the District XA Ethics Committee (DEC). A two-count complaint charged respondent with violations of RPC 1.16(a)(1) (a lawyer shall not represent a client where doing so violates an RPC), RPC 5.5(a)(1) (unauthorized practice of law), 7.1(a) (making a false communication about the

lawyer or lawyer's services), RPC 7.5(a) and (b) (using a firm name, letterhead or other professional designation that violates RPC 7.1), RPC 8.4(c) (conduct involving dishonesty, fraud, deceit, or misrepresentation), and RPC 8.4(d) (conduct prejudicial to the administration of justice). We determine to impose a reprimand.

Respondent was admitted to the New Jersey bar in 2002 and the New York bar in 2003. She has no prior discipline. However, at various times between September 2007 and September 2013, respondent had been declared ineligible to practice, based on her failure to pay her annual registration fee to the New Jersey Lawyers' Fund for Client Protection (CPF). Her continued practice during two periods of ineligibility formed the basis of the complaint.

Respondent testified at the DEC hearing that she paid the annual attorney assessment to the CPF for the years 2003 through 2006 by personal check, in mid-April of each year.

For the 2007 annual attorney assessment, the CPF sent respondent the attorney registration materials on April 3, 2007 and again on July 20, 2007. The CPF received no payment from respondent. Therefore, the Supreme Court entered an Order on September 19, 2007, declaring respondent ineligible to practice law, effective September 24, 2007, for failure to pay the 2007 annual

assessment. Respondent testified that she did not recall receiving the Order, but "could not say unequivocally" that she had not received it.

According to CPF records, respondent was ineligible from September 24, 2007 until October 16, 2008, when that office received respondent's \$552 payment for the years 2007 and 2008. At the DEC hearing, respondent admitted that she had been ineligible to practice law during that thirteen-month period.

Moreover, respondent admitted at the hearing below that she had engaged in motion practice in June and July 2008, in the Superior Court of New Jersey, Monmouth County, in a matter captioned, The Plastic Surgery Center v. Marasek.

According to respondent, she did not intentionally fail to pay the 2007 annual assessment. Rather, she surmised that the registration materials might have been lost in the mail, inasmuch as she had experienced problems receiving other mail at her home address during that approximate time. Respondent admitted, however, that she maintained the same home address in 2007 as in 2006, when she timely paid the annual assessment for that year. Nevertheless, she claimed that she had not been aware of her ineligible status at the time.

In respect of a second period of ineligibility, respondent paid the annual attorney assessments for 2009 through 2012, in mid-April of each year, with the exception of 2010, which she paid on October 19, 2010. By Order, effective September 27, 2010, respondent was declared ineligible for failure to pay the CPF annual attorney assessment for 2010. Respondent's name was removed from the list of ineligible attorneys on October 18, 2010, upon her payment of the delinquent amount. Once again, respondent admitted that she was ineligible to practice law during that three-week period in 2010, but continued to do so, unaware that she had been placed on the ineligible list.

The complaint did not charge respondent with practicing law while ineligible for failure to pay the 2013 CPF assessment. Nevertheless, the DEC hearing panel chair admitted evidence that respondent had been declared ineligible by Order effective September 30, 2013 and that her name was removed from the ineligible list on May 29, 2014, after she paid the assessment.

Respondent admitted that she had continued to practice law during the 2013 eight-month period of ineligibility, but did not recall having seen the 2013 ineligibility Order prior to the DEC investigation. She also noted that the Order cited a wrong office address for her, namely 3155 Route 10 East, Suite 214, Neptune Township, New Jersey 07753. According to respondent, the law

office where she worked was located in Denville, New Jersey, 07834, not Neptune Township.

Respondent explained that she had inadvertently affixed her home zip code when completing the section for her office address, during the 2012 attorney registration process, and that mistake may have caused the address error at the CPF.

Respondent objected to the admission into evidence of a January 27, 2016 letter from her supervising attorney, Michael Harrison, to the DEC, about law firm reimbursements for respondent's CPF payments. She did not object to the introduction of CPF documentation evidencing the 2013 ineligibility period. Nevertheless, Harrison's letter was admitted in evidence.

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The DEC found respondent guilty of violations of RPC 5.5(a)(1) for the following time periods, during which she admitted having practiced while ineligible: September 24, 2007 to October 16, 2008; and September 27, 2010 to October 18, 2010.

In respect of the third period of ineligibility, September 30, 2013 to May 29, 2014, the panel did not find a violation, noting that the complaint had not charged respondent with unethical conduct for that timeframe. Rather, the

"testimony and evidence of the third period of ineligibility [was] included only to evaluate the quantum of discipline to impose."

The DEC found that respondent's practice of law while ineligible also violated RPC 1.16(a)(1), RPC 7.1(a)(1), RPC 7.5(a), RPC 7.5(b), RPC 8.4(d), and R. 1:20-1(b) and (c), and R. 1:28-2(a), but did not identify factual support for those findings. Finding "no evidence of intentional conduct by respondent," the panel dismissed the RPC 8.4(c) charge.

Despite the DEC's finding of "no intentional conduct," it cited, as an aggravating factor, respondent's "continuing course of dishonesty or misrepresentation. . . . Here, Respondent was ineligible to practice law twice, as charged, though she was unaware of her ineligibility, but, in reality, [was] ineligible to practice law three times in ten years." The DEC did not explain how respondent's actions constituted dishonesty or misrepresentation. In further aggravation, the DEC noted respondent's failure, after the first period of ineligibility, to take steps to prevent a recurrence.

The DEC considered several mitigating factors. Specifically, respondent (1) readily admitted her wrongdoing; (2) expressed contrition and remorse; (3) cooperated fully with ethics authorities; (4) did not seek personal gain; and (5) caused no harm to any client.

The panel recommended a reprimand.

* * *

Following a de novo review of the record, we are satisfied that the DEC's finding that respondent's conduct was unethical is fully supported by clear and convincing evidence.

Respondent admitted that she continued to practice law during two ineligibility periods: September 24, 2007 to October 16, 2008, and September 27, 2010 to October 18, 2010. She consistently testified that she had not done so intentionally, and that, in each instance, she was unaware of the ineligibilities as they occurred. Nevertheless, respondent's continued practice during two periods of ineligibility violated RPC 5.5(a).

However, we do not agree with the DEC's additional findings. Specifically, the RPC 1.16(a)(1) charge is subsumed in the RPC 5.5(a)(1) finding. The RPC 7.1(a)(1), RPC 7.5(a) and (b), and RPC 8.4(d) findings have no factual support in the record. Therefore, we dismissed those charges, as well as the RPC 8.4(c) allegation that the DEC dismissed, as inapplicable.

In summary, respondent is guilty of having practiced law during two periods of ineligibility for failure to pay the CPF annual attorney assessments for 2007 and 2010, in violation of RPC 5.5(a)(1). The only issue remaining is the appropriate discipline for respondent's misconduct.

Practicing while ineligible is generally met with an admonition if the attorney is either unaware of the ineligibility or advances compelling mitigating factors. An admonition may be sufficient even if the attorney displays other, non-serious conduct. See, e.g., In the Matter of Jonathan A. Goodman, DRB 16-436 (March 22, 2017) (attorney practiced law during two periods of ineligibility, a violation of RPC 5.5(a); the attorney was unaware of his ineligibility at the time of the misconduct; compelling mitigation presented); In the Matter of John L. Conroy, Jr., DRB 15-248 (October 16, 2015) (attorney practiced law while administratively ineligible to do so for failure to submit the required IOLTA forms, a violation of RPC 5.5(a); the attorney also violated RPC 1.5(b) for failing to provide the client with a writing setting forth the basis or rate of his fee; thereafter, the attorney lacked diligence and failed to keep the client informed about the matter, violations of RPC 1.3 and RPC 1.4(b); finally, the attorney failed to cooperate with the ethics investigation, a violation of RPC 8.1(b); we considered that, ultimately, the attorney entered into a disciplinary stipulation, that he agreed to return the entire fee of \$2,500, and that he had an otherwise unblemished record of forty years at the bar); and In the Matter of James David Lloyd, DRB 14-087 (June 25, 2014) (during an approximate thirteen-month period of ineligibility, the attorney handled three client matters; in mitigation, the attorney was changing

careers to become a youth minister at the time, that he inadvertently failed to pay the assessment, that the services performed in the three client matters were for friends or acquaintances, that he quickly cured the ineligibility upon learning of it, and that he had no prior discipline in his eighteen-year legal career).

If the attorney practices law while ineligible, and is aware of the ineligibility, a reprimand generally ensues. See, e.g., In re Fell, 219 N.J. 425 (2014) (reprimand for attorney who, while ineligible for a five-month period, represented a matrimonial client, knowing of his ineligibility; in aggravation, the attorney had received a prior reprimand; in mitigation, he readily admitted his conduct and served his community); In re Jay, 210 N.J. 214 (2012) (reprimand for attorney who was aware of his ineligibility and practiced law nevertheless; prior three-month suspension for possession of cocaine and marijuana); and In re (Queen) Payton, 207 N.J. 31 (2011) (reprimand for attorney who practiced law while ineligible and was aware of her ineligibility; prior admonition for the same violation).

In In re Clausen, 213 N.J. 461 (2013), the attorney consented to the imposition of a reprimand, despite his claimed unawareness of his ineligibility to practice law for a CPF violation. Like respondent, Clausen had made late payments in the past. He acknowledged, however, that his ineligibility was the

result of carelessness, and that his carelessness did not excuse his failure to comply with his CPF obligations or his continued practice of law while ineligible. As a result of Clausen's pattern of late payments, we determined that he was, at a minimum, constructively aware of his ineligible status. In the Matter of Paul Franklin Clausen, DRB 13-010 (April 22, 2013). The Court agreed.

Similarly, here, respondent must have known that the attorney registration and payment to the CPF is an annual event that takes place early each year. Like Clausen, respondent handled her own registration materials, year after year, and paid the annual assessment herself. For example, from 2003 through 2006, she paid by personal check, in mid-April of each year. Yet, in 2007, she took no action to track down her registration materials. Rather, thirteen months later, she paid the severely delinquent assessment. In 2010, once again, she should have sought assistance if and when she was unable to locate the attorney registration materials sent to her for that year. However, respondent testified plainly that she did not know that she had been declared ineligible, and did not recall receiving the registration materials for those years.

We make no finding in respect of respondent's 2013-2014 ineligibility period, as she was not charged with a violation for that conduct. However, we


took into consideration that respondent failed to take affirmative steps – extra care – after the second period of ineligibility, to ensure that she never practiced law while ineligible again.

In our view, the mitigating factors presented are not sufficiently compelling to warrant a decrease in the quantum of discipline in this case. As in Clausen, we determine to impose a reprimand.

Member Hoberman 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 Stacy B. Fronapfel
Docket No. DRB 18-121

Argued: June 21, 2018

Decided: October 15, 2018

Disposition: Reprimand

<i>Members</i>	Reprimand	Recused	Did Not Participate
Frost	X		
Clark	X		
Boyer	X		
Gallipoli	X		
Hoberman			X
Joseph	X		
Rivera	X		
Singer	X		
Zmirich	X		
Total:	8	0	1


Ellen A. Brodsky
Chief Counsel