

Supreme Court of New Jersey
Disciplinary Review Board
Docket No. DRB 19-469
District Docket Nos. XI-2015-0015E and
XI-2016-0011E

In the Matter of
Douglas F. Ortelere
An Attorney at Law

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Decision

Argued: June 18, 2020

Decided: November 23, 2020

Susan E. Champion appeared in behalf of the District XI Ethics Committee.

Respondent appeared pro se.

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

This matter was before us on a recommendation for a reprimand filed by the District XI Ethics Committee (DEC). The formal ethics complaint charged respondent with having violated RPC 3.4(c) (knowingly disobeying the rules of a tribunal); RPC 5.5(a)(1) (engaging in the unauthorized practice of law); RPC

8.1(b) (failing to cooperate with disciplinary authorities); RPC 8.4(c) (engaging in conduct involving dishonesty, fraud, deceit or misrepresentation); and RPC 8.4(d) (engaging in conduct prejudicial to the administration of justice).

For the reasons set forth below, we determine to impose a censure, with a condition.

Respondent was admitted to the New Jersey bar in 1983. At the relevant time, he maintained a law practice in Philadelphia, Pennsylvania.

In 2004, respondent received an admonition for failing to communicate with a client, failing to promptly disburse funds to which a client was entitled, and practicing law while ineligible. In the Matter of Douglas F. Ortelere, DRB 03-377 (February 11, 2004).

Respondent has had multiple periods of ineligibility for his failure to pay the annual assessment to the New Jersey Lawyers' Fund for Client Protection (CPF). The misconduct in the instant matter arose from his ineligibility from September 25, 2012 through his reinstatement on May 7, 2013. Effective August 25, 2014, the Court again declared respondent ineligible to practice law for noncompliance with CPF requirements, and he remains ineligible to date.

Since November 17, 2014, respondent also has been ineligible to practice law due to his failure to comply with mandatory continuing legal education requirements (CLE). He retired from the practice of law in New Jersey on June

19, 2020.

At the commencement of the ethics hearing, the presenter filed a motion to dismiss the RPC 8.1(b) charge, which the hearing panel granted. Thus, the hearing proceeded on the remaining charges. Respondent and the presenter entered into a stipulation of facts, dated February 5, 2019.

As set forth above, by Order effective August 25, 2014, respondent was declared ineligible to practice law for failure to comply with his CPF obligations. Because he neither provided his attorney registration information nor paid the annual assessment, he also failed to update his contact information or his attorney bank account information.

On twelve occasions, between 1990 and 2013, the Court declared respondent ineligible to practice law for his failure to pay the annual assessment to the CPF. Therefore, prior to his period of ineligibility underpinning this matter, he was aware of his CPF obligations.

On August 25, 2014, the Court declared respondent ineligible to practice law, for the thirteenth time, for failure to comply with his CPF requirements. The Court's Order stated that he "shall remain ineligible to practice law in New Jersey until all fees have been paid in full." Also, effective November 17, 2014 and November 16, 2015, the Court declared respondent ineligible to practice law for his failure to comply with

mandatory CLE requirements. Respondent testified that his inability to fulfill the CLE requirements was due to “financial pressure.”

Respondent was ineligible to practice law for his CPF deficiencies from September 24, 2012 until May 7, 2013, when he returned to eligible status. On November 14, 2012, despite his ineligibility, he issued a summons and filed a complaint, in the Superior Court of New Jersey, Law Division, Bergen County, in behalf of his client, Elizabeth Hunter. Respondent signed the complaint as “Counsel for Plaintiff” and, therefore, misrepresented his eligibility status.

On January 28, 2013, during that same period of ineligibility, defendants’ counsel removed the Hunter litigation to the United States District Court for the District of New Jersey (DNJ). Respondent remained Hunter’s counsel of record. On May 7, 2013, the same date his CPF eligibility was restored, respondent filed the First Amended Complaint in the Hunter matter.

Respondent also represented another client, Dina Ucciardi, in the DNJ, during four depositions that took place on January 8, 9, 12, and 16, 2016, when he was ineligible to practice law. Respondent falsely presented himself as an attorney in good standing to defense counsel and others present for the depositions.

Defendant's counsel in the Ucciardi matter referred respondent's misconduct to disciplinary authorities. Counsel reported that respondent, working as a per diem attorney, was attending depositions for the plaintiffs' attorney of record, who was not admitted in New Jersey. The plaintiffs' attorney of record denied awareness of respondent's ineligibility and asserted that he had hired respondent through an attorney service.

Respondent admitted having violated RPC 8.4(c) by failing to inform his clients, opposing counsel, and the courts that he was ineligible to practice law; RPC 8.4(d) by filing the complaint in the Hunter matter, during his period of ineligibility; and RPC 3.4 and RPC 5.5(a)(1) by practicing law in violation of the Court Orders governing his ineligibility.

In mitigation, respondent asserted that, during the relevant times, he suffered from a cognitive impairment that precluded him from complying with his CPF and CLE requirements; that the cognitive impairment resulted from blood cancer, with which he was diagnosed in 2006; that, during the relevant timeframe, he was under stress from his divorce, was the caretaker for his father, and was having "difficulty in the practice of law in general;" and that he regularly volunteers at a homeless shelter and a food kitchen.

During the ethics hearing, respondent asserted that he is no longer practicing law in New Jersey or any other jurisdiction, and has no immediate plans to resume the practice of law.

The hearing panel found that respondent violated RPC 3.4(c); RPC 5.5(a)(1); RPC 8.4(c); and RPC 8.4(d). The DEC remarked that respondent exhibited a long history of ineligibility to practice due to his failure to properly register and pay his assessments to the CPF. The DEC noted his prior admonition for failure to comply with the Rules and his consistent failure to comply with the CPF or CLE requirements. The DEC emphasized respondent's representation that he is no longer practicing law in New Jersey or any other jurisdiction, and has no immediate plans to resume the practice of law.

The panel observed that, during respondent's periods of ineligibility, although he prepared pleadings and attended depositions, which were complex tasks, he claimed that he could not complete the simple CPF registration form or pay his annual fee. He admitted his failure to comply, and in explanation, proffered his health issues, the effect that his divorce had on his ability to think clearly, and his caregiving duties for his father. The panel found his health issues, and his admission of misconduct at the hearing, to constitute mitigating factors. The panel determined, however, that the

medical reports did not indicate that respondent was mentally or physically unable to comply with his CPF or CLE requirements.

The panel found respondent guilty of violating RPC 3.4(c); RPC 5.5(a)(1); RPC 8.4(c); and RPC 8.4(d). The panel recommended a reprimand, based on respondent's acknowledgement of his misconduct and his prior admonition. The panel also recommended that, if respondent resumes the practice of law, he do so only under the supervision of a proctor.

By e-mail dated April 27, 2020, in partial opposition to the DEC's recommendation, respondent stated that he did not object to the imposition of a reprimand, but did object to the appointment of a proctor in the event that he resumes practicing law in New Jersey. He noted that his disciplinary history is minimal, and that he has met all the deadlines in the present case. He attached a September 18, 2019 letter from his physician, who opined that respondent had the capacity to practice law.

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.

The facts contained in the record clearly and convincingly support the finding that respondent violated RPC 5.5(a)(1). For the reasons set forth below,

however, we determined to dismiss the RPC 3.4(c), RPC 8.4(c), and RPC 8.4(d) charges.

Respondent admittedly violated RPC 5.5(a)(1) by practicing law in violation of the Court's Orders of ineligibility. Specifically, in respect of the Hunter matter, respondent practiced law during a period when he was administratively ineligible, from November 2012 through May 7, 2013, the date he was reinstated. Further, in respect of the Ucciardi matter, respondent practiced law in January 2016, when he was once again administratively ineligible. Respondent was aware of his ineligibility, because he acknowledged his deficiencies by ultimately complying with the applicable Rules, and was reinstated on May 7, 2013. Moreover, he had similarly cured twelve prior periods of ineligibility to practice law.

Although respondent proffered mitigation linking his medical condition to his mild cognitive impairment, clearly, he knew of his ineligibility, because it was a recurring problem, and any such impairment did not prevent him from filing pleadings or defending depositions. These tasks are objectively more complex than completing CLE classes and CPF registration forms, and paying administrative fees.

The misconduct supporting the RPC 3.4(c); RPC 8.4(c); and RPC 8.4(d) charges, however, are part and parcel of the misconduct supporting the RPC

5.5(a)(1) violations and, thus, are subsumed in the RPC 5.5(a)(1) finding. As a matter of stare decisis, we and the Court have found that RPC 5.5(a)(1) adequately addresses the scope of the misconduct for practicing law while ineligible, unless attorneys affirmatively misrepresent their eligibility to practice law, or judicial resources are wasted due to the misconduct, both of which are absent in this case. See In re Brent, 242 N.J. 138 (2020), and In re Colby, 232 N.J. 273 (2018).

In sum, we find that respondent violated RPC 5.5(a)(1) in two client matters. We determine to dismiss the charges that he violated RPC 3.4(c), RPC 8.4(c), and RPC 8.4(d). The only remaining issue is the appropriate quantum of discipline to be imposed for respondent's misconduct.

Ordinarily, when an attorney practices law while ineligible, and is aware of the ineligibility, either a reprimand or a censure will result, depending on the existence and nature of aggravating factors. See, e.g. In re Fell, 219 N.J. 425 (2014) (reprimand for attorney who was ineligible for five months, was aware of his ineligibility, but, nevertheless, represented a matrimonial client; an aggravating factor was the attorney's prior reprimand; mitigating factors included the attorney's ready admission of his misconduct and the service he provided to his community); In re Moskowitz, 215 N.J. 636 (2013) (reprimand for attorney who was ineligible for more than seven months, but practiced law

knowing that he was ineligible to do so); In re D'Arienzo, 217 N.J. 151 (2014) (censure imposed where the attorney's failure to ensure that payment was sent to the CPF was deemed "akin to knowledge on his part;" in aggravation, the attorney had an extensive disciplinary history, which included a 2013 reprimand, also for practicing while ineligible); and In re Macchiaverna, 214 N.J. 517 (2013) (censure for attorney who knowingly practiced law while ineligible and committed recordkeeping violations; aggravating factors included the attorney's prior reprimand for recordkeeping violations that led to the negligent misappropriation of client funds and his failure to appear on the return date of the Court's order to show cause).

Here, like the attorney in D'Arienzo, respondent knew or should have known of his ineligibility status, and has a prior admonition for misconduct including practicing law while ineligible. In crafting the appropriate discipline to be imposed, we consider relevant aggravating and mitigating factors. In aggravation, respondent has had multiple periods of ineligibility for failure to comply with his CPF and CLE obligations, demonstrating his repeated refusal to timely comply with the obligations imposed on all New Jersey attorneys.

In mitigation, respondent suffers from a mild cognitive impairment, which he claimed affected his compliance with CPF and CLE requirements, but clearly did not prevent him from performing complex legal tasks, such as defending

depositions or filing pleadings. Also, respondent entered into the stipulation admitting his misconduct, and represented that he is no longer practicing law.

On balance, we find that the mitigating factors are not sufficiently compelling to warrant a decrease in the quantum of discipline in this case. Accordingly, we determined that a censure is the appropriate sanction for respondent's misconduct.

Moreover, in light of respondent's history of cognitive impairment, as a condition precedent to his resumption of the practice of law, he must provide current proof of fitness to practice law, as attested to by a psychiatrist approved by the Office of Attorney Ethics.

Chair Clark and Members Boyer, Petrou, and Singer voted to impose a reprimand, with the same condition.

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
Bruce W. Clark, Chair

By: /s/ Ellen A. Brodsky
Ellen A. Brodsky
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Douglas F. Ortelere
Docket No. DRB 19-469

Argued: June 18, 2020

Decided: November 23, 2020

Disposition: Censure

<i>Members</i>	Censure	Reprimand	Recused	Did Not Participate
Clark		X		
Gallipoli	X			
Boyer		X		
Hoberman	X			
Joseph	X			
Petrou		X		
Rivera	X			
Singer		X		
Zmirich	X			
Total:	5	4	0	0

/s/ Ellen A. Brodsky

Ellen A. Brodsky
Chief Counsel