

5.5(a)(1) (two instances – engaging in the unauthorized practice of law). In his verified answer to the complaint, respondent admitted both charges.

For the reasons set forth below, we determine to impose an admonition.

Respondent earned admission to the New Jersey bar in 1988 and has no disciplinary history.

By Order dated October 29, 2007, the Court declared respondent administratively ineligible to practice law in New Jersey for failing to comply with the mandatory Interest on Lawyers Trust Accounts (IOLTA) program. On April 10, 2008, having cured his IOLTA deficiencies, respondent once again became eligible to practice law in New Jersey.

By Order dated September 28, 2009, the Court declared respondent ineligible to practice law in New Jersey due to nonpayment of his annual attorney assessment to the New Jersey Lawyers' Fund for Client Protection (the CPF).

By Order dated October 26, 2009, the Court again declared respondent administratively ineligible to practice law in New Jersey for failing to comply with the mandatory IOLTA program.

Effective August 24, 2015, the Court administratively revoked respondent's license to practice law in New Jersey, pursuant to R. 1:28-2(c), for his failure to pay the annual attorney registration fee to the CPF for seven

consecutive years. R. 1:28-2(c) states, in relevant part, that “an Order of revocation shall not, however, preclude the exercise of jurisdiction by the disciplinary system in respect of any misconduct that occurred prior to [the] Order’s effective date.” Thus, we retain jurisdiction to address respondent’s misconduct described below.

On June 29, 2020, the DEC filed a complaint alleging that respondent had twice violated RPC 5.5(a)(1) by practicing law, in 2007-2008 and in 2014, while ineligible to do so. In his July 23, 2020 verified answer to the formal ethics complaint, respondent admitted all of the factual allegations and that he had twice violated RPC 5.5(a)(1) – first, by his representation of client Donald Robinson in a criminal case in Camden County and, second, by working as general counsel for Navient.

In mitigation, respondent readily admitted his wrongdoing, expressed contrition and remorse, and requested that we consider his misconduct to be minor.

Respondent explained that, in 2007, he did not realize that he had failed to timely file his IOLTA registration. Prior to the “brief time” respondent maintained a solo practice, he had worked in the Atlantic County Prosecutor’s Office; at the firm Megagree, Youngblood, Franklin & Corcoran; and at the firm Sherman Silverstein. Thus, he had relied upon the professional support staff at

those offices to handle administrative tasks. However, respondent attributed his administrative oversights to his failure to “focus appropriate attention” on the administrative and business-related obligations of maintaining a solo law practice. Respondent stated that he corrected his “inadvertent” mistake, in April 2008, when he became aware of his IOLTA non-compliance.

Additionally, respondent offered his depression diagnosis as an explanation for his failure to file his IOLTA registration, but candidly conceded that he did not provide proof of a causal connection between his behavior and his diagnosis. Respondent merely stated that his depression impaired his judgment in “certain areas, or buckets.” He explained that he was able to perform at a high level in terms of strategic and complex decision making but claimed an inability to focus on simple or basic tasks. Respondent admitted that, although he is now aware of how his depression impacts his ability to function, he still lacks the ability to focus on basic tasks, such as bookkeeping and administrative deadlines.

Regarding his employment as general counsel for Navient, respondent explained that he decided to take the job after he was unable to accept a position at the University of North Carolina-Charlotte for personal reasons. Respondent explained that, while he worked as general counsel for Navient, he recognized there were “basic, yet important aspects of legal representation” in which he

could not engage. Therefore, respondent stated he did not make court appearances on behalf of the company and did not execute any documents that were part of any legal proceeding.

Respondent described his responsibilities at Navient as assisting company stakeholders in addressing federal regulatory requirements and assisting outside counsel with federal regulatory inquiries and investigations. Respondent asserted that, if his title at Navient were managing director instead of general counsel, his responsibilities would have been identical. Nonetheless, respondent admitted that he now recognizes that he had an insufficient understanding of his limitations when working for Navient. He concluded his submission by observing that he did not request a hearing and submitted “to the Committee’s review and judgment on the papers and record submitted.”

On September 22, 2020, as noted above, this matter was submitted for our review pursuant to R. 1:20-6(c)(1). During oral argument before us, the DEC acknowledged the presence of mitigating factors, particularly, respondent’s cooperation, contrition and mental health concerns. The DEC requested imposition of a reprimand or a censure.

For his part, respondent expressed remorse, conceding that he “was just flat out wrong in the manner in which I attempted to continue to move forward with my career.” He explained that he had been inattentive to the status of his

license during his prior service as the chief compliance officer for the New Jersey Higher Education Student Assistance Authority, when he was not practicing law. He expressed remorse for not “paying attention” and asserted that he had “immediately corrected” his non-compliance when it was brought to his attention.

Following our de novo review, we determine that respondent’s two admitted violations of RPC 5.5(a)(1) are supported by clear and convincing evidence.

Specifically, we find that, commencing in 2007 through April 22, 2008, respondent represented Donald Robinson in a criminal case in Camden County, New Jersey. Respondent, however, was administratively ineligible to practice law from October 29, 2007 through April 10, 2008, due to his failure to comply with IOLTA requirements.

Thereafter, from September 28, 2009, until respondent’s license was administratively revoked on August 24, 2015, respondent was ineligible to practice law due to his failure to comply with both IOLTA and CPF requirements. Respondent again violated RPC 5.5(a)(1) when, beginning in 2014, he worked as general counsel to Navient. Although respondent was unaware of his ineligibility while representing Robinson, it is clear that he knew he was not eligible to practice law while he worked for Navient, yet, he did so

anyway. Respondent's asserted abstention from court appearances and execution of litigation-related documents does not change our conclusion that he practiced law when ineligible to do so.

In sum, respondent twice violated RPC 5.5(a)(1). The only remaining issue for our determination is the appropriate quantum of discipline to be imposed for respondent's misconduct.

Ordinarily, when an attorney practices while ignorant of his or her ineligibility, we will impose an admonition. 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; in mitigation, 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).

However, 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, after becoming aware that he had represented a client while ineligible, respondent should have taken precautions to ensure that he did not repeat such an ethics violation in the future. However, notwithstanding his ineligibility to practice for five years, and awareness that he had allowed his license to lapse, he accepted a position as general counsel to Navient. Instead of taking action to rectify all deficiencies and to ensure that he was eligible to practice law in New Jersey, respondent instead set futile limitations on himself regarding the scope of the legal representation he provided Navient.


In mitigation, respondent readily admitted his wrongdoing and was genuinely contrite. There is no aggravation to consider.

We accord substantial weight to the mitigating factors of cooperation and contrition and determine that an admonition is, on balance, a sufficient quantum of discipline to protect the public and preserve confidence in the bar.

Members Hoberman and Joseph voted to impose a reprimand. Member Campelo was absent.

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
Hon. Maurice J. Gallipoli, A.J.S.C. (Ret.),
Chair

By: 

Johanna Barba Jones
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Joel S. Mayer
Docket No. DRB 20-272

Argued: April 15, 2021

Decided: July 14, 2021

Disposition: Admonition

<i>Members</i>	Admonition	Reprimand	Absent
Gallipoli	X		
Singer	X		
Boyer	X		
Campelo			X
Hoberman		X	
Joseph		X	
Menaker	X		
Petrou	X		
Rivera	X		
Total:	6	2	1



Johanna Barba Jones
Chief Counsel