

Supreme Court of New Jersey
Disciplinary Review Board
Docket No. DRB 21-040
District Docket No. IV-2019-0005E

In the Matter of
Leah A. Vassallo
An Attorney at Law

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Decision

Argued: May 20, 2021

Decided: August 9, 2021

Anne E. Walters appeared on behalf of the District IV Ethics Committee.

Katie B. Coleman appeared on behalf of respondent.

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 IV Ethics Committee (the DEC). The formal ethics complaint charged respondent with having violated RPC 3.4(c) (knowingly disobeying an

obligation under the rules of a tribunal) and RPC 5.5(a)(1) (engaging in the unauthorized practice of law).

Because we are equally divided on the quantum of discipline to be imposed on respondent, we submit this decision to the Court without a final determination.

Respondent earned admission to the New Jersey bar in 2006 and has no prior discipline. During the relevant timeframe, she maintained a law practice in Vineland, New Jersey. During various periods, she served as a member of the Franklin Township Committee; municipal prosecutor; municipal public defender; affordable housing attorney; and mayor for the Township of Franklin, New Jersey. At the time of her ethics hearing, she was also employed by Community Oil, in Vineland, New Jersey.

Effective September 28, 2009, the Court declared respondent administratively ineligible to practice law for failure to pay her required assessment to the Lawyers' Fund for Client Protection (CPF). Respondent's ineligibility period continued for almost a year, until she cured it, on September 15, 2010.

Effective September 26, 2011, the Court again declared respondent ineligible to practice law for failure to pay her required assessment to the CPF. This time, respondent's ineligibility period continued for more than one year,

until she cured it, on October 2, 2012.

Effective October 21, 2011, the Court declared respondent administratively ineligible to practice law for noncompliance with the mandatory procedures for annual Interest on Lawyers' Trust Accounts (IOLTA) registration, pursuant to R. 1:28A-2(d). Her ineligibility period continued for more than eighteen months, until she cured it, on July 23, 2013.

Finally, effective September 12, 2016, the Court declared respondent ineligible to practice law, for a third failure to pay her required assessment to the CPF. Respondent's ineligibility period continued for three days, until she cured it, on September 15, 2016.

During her periods of ineligibility, respondent provided legal representation to two relatives in both federal and state court. Specifically, respondent entered her appearance to represent a relative, who is also a lawyer, in a divorce and a custody matter. That attorney relative testified that she, and not respondent, performed the legal work on the case. Respondent also represented a different relative in litigation filed by the divorced spouse of the first relative. Respondent did not receive compensation for the appearances.

Also, during her periods of administrative ineligibility, respondent signed annual agreements to serve as the public defender for the Township of Franklin, New Jersey. The agreements to serve as the public defender stated that

respondent “shall perform her duties to the best of her ability and in accordance with the Code of Professional Ethics by the New Jersey Supreme Court.” In total, respondent served as the Franklin Township public defender from 2009 through 2015, when she resigned.

The DEC charged respondent with violating RPC 3.4(c) by engaging in the practice of law while ineligible, in violation of the Court’s Orders, and with violating RPC 5.5(a)(1) by representing individuals and serving as a public defender while administratively ineligible.

Respondent partly denied the charges. In her answer, she asserted that she did not violate RPC 3.4(c) because the title of that Rule refers to ensuring fairness to the opposing party and counsel. Respondent argued that the ethics complaint was not filed by a former client or opposing counsel, and that the “integrity of the legal field . . . was not diminished or compromised at all by her failure to timely return forms.”

Respondent further argued that the Rule required an attorney to “knowingly” disobey an obligation. Respondent argued that she never “knowingly” practiced law while ineligible, because “she was not aware of her ineligibility at the time,” partly due to a debilitating chronic autoimmune disorder which “limited her effective awareness of the obligation.” Respondent testified that, between 2009 and 2012, she was very sick, and went through

various treatments with doctors to obtain a diagnosis. During that time, she suffered from fatigue, joint pain, and inflammation which worsened until she could not get out of bed or use her hands. Her condition was diagnosed as rheumatoid arthritis, which, she stated, gradually improved with antibiotics.

Respondent also maintained that, although her name was included on lists attached to the Court's Orders, she had not received notices regarding the Orders. At the ethics hearing, when asked if she was aware of her obligations regarding the CPF and IOLTA, respondent testified: "I know you have to fill out the forms and pay the fee every year. I wasn't aware that I had missed those deadlines, and sometimes missed them by quite a bit. I wasn't aware that I had not done it or that it was due, but I know generally that it is something that is required."

Respondent failed to offer documentation to connect her medical condition to her failure to meet her eligibility requirements, testifying that she was "not comfortable" doing so. Respondent claimed that she did not want her medical history to be made public.

On cross-examination, respondent stated that she did not seek a protective order to submit her medical records because she knew the hearing was public. She further conceded that she was "perfectly capable" of filling out the forms for the CPF, but she "was practicing law on a very limited basis and [she] had

some serious health issues going on. It wasn't at the front of [her] mind” Respondent admitted that her symptoms did not preclude her from doing her work as a public defender, committee member, or township liaison. She never filed for Family Medical Leave Act benefits. Respondent commented that her symptoms caused her to “scale back [her] practice significantly,” and that “[t]here were a couple of times where I was sick and had to call someone else to cover me, but if I felt like anything was beyond my ability to perform it adequately and competently . . . I would not have taken it.”

Respondent also called Nancy Kennedy, Esq., her law partner, as a witness at the ethics hearing. Kennedy previously had practiced while ineligible and received a reprimand for the same violations charged against respondent. In the Matter of Nancy Kennedy Brent, DRB 17-202 (September 22, 2017); In re Brent, 231 N.J. 131 (2017). Although respondent's counsel sought to have Kennedy distinguish her own case from respondent's, the hearing panel excluded that testimony as irrelevant.¹ Instead, Kennedy testified regarding respondent's character as her law partner and the effects of respondent's medical

¹ Although the panel was within its discretion to exclude this testimony on the basis of relevance under N.J.R.E. 401, Kennedy's proffered testimony appears to have been more of a legal opinion offered as expert testimony. N.J.R.E. 702; N.J.R.E. 703. Questions of law, such as the similarity of Brent's case to that of respondent, are required to be determined by the finder of fact alone and generally are not appropriate objects of expert testimony. See Bedford v. Riello, 392 N.J. Super. 270, 278-279 (App. Div. 2007), rev'd on other grounds, 195 N.J. 210 (2008).

conditions on her practice of law.

In her post-hearing submission, respondent, through counsel, Katie B. Coleman, Esq., argued that the charged misconduct took place nearly a decade ago and, thus, impaired respondent's ability to defend herself. Additionally, respondent argued that "this process could not have been less fair or effective;" she was "targeted because of her political activities;" and it was "unfair for her to be singled out, when hundreds of attorneys are on the ineligible list each year and are not similarly scrutinized."

Respondent maintained that discipline should not be imposed or should be "absolutely minimal," claiming she did not "knowingly" practice while ineligible. Respondent characterized her failure to file her annual registration with the CPF as "regrettable," but asserted that she "never harmed a public defender client, family member, or any opposing counsel."

In her post-hearing submission, the presenter asserted that respondent's arguments that she should receive little or no discipline "are without merit and unsupported by precedent," because respondent admitted that she had practiced law during periods of ineligibility. The presenter further noted that, although respondent claimed she had been deprived of an opportunity to present a timely defense, "she does not state with particularity what additional documents or information she would have needed to fairly defend herself, and this contention

was not raised . . . since respondent was served with the Complaint.”

On December 2, 2020, the DEC found, by clear and convincing evidence, that respondent violated both RPC 3.4(c) and RPC 5.5(a)(1). Specifically, the DEC found that respondent violated those Rules by failing to abide by numerous Court Orders which required her to refrain from practicing law. She further violated the Rules by holding the public defender position and engaging in private practice while administratively ineligible to practice law.

The DEC articulated the issue before them as “whether Respondent, having complied with reporting obligations in the past and having offered no evidence that she attempted to comply during the years in question, has lost the right to claim lack of knowledge regardless of whether she was advised via court order or otherwise that she was administratively ineligible.” The DEC found that respondent’s claimed lack of knowledge was “not persuasive.”

In order to assess the quantum of discipline for respondent’s misconduct, the DEC, citing In re Clausen, 213 N.J. 461 (2013), noted respondent’s lack of disciplinary history and commented that, “[a]ccordingly, a recommendation of a reprimand would hinge upon a finding that respondent practiced law while aware of her ineligibility.” The DEC determined that respondent was “constructively aware” of her ineligibility status and added:

where[,] as here[,] a respondent is administratively ineligible from September 20, 2009 to September 15,

2010 and September 26, 2011 to October 12, 2012 and September 21, 2011 to July 23, 2013 and even three days in 2016, the claim of lack of knowledge eventually dissipates like the grin on a Cheshire cat.

As noted previously, we credit Respondent's claim of difficulties with receiving mail. It strains credulity, however, to posit that such problems persisted on or about the dates when orders of suspension were mailed in 2009, 2010, and 2011. Additionally, we credit Respondent's testimony supported by her witnesses that she experienced medical problems over the years, but we cannot conclude that these problems prevented her from submitting required documentation when due or during the extensive grace periods that precede an order of ineligibility.

[HPR at 8.]²

The DEC, thus, recommended that respondent be reprimanded for her misconduct.

In her submission to us in anticipation of oral argument, the presenter reiterated her post-hearing submission. Respondent sought to distinguish her case from those cited by the DEC, due to the mitigating effect of respondent's medical condition.

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.

² "HPR" refers to the December 2, 2020 hearing panel report.

Specifically, respondent repeatedly engaged in the practice of law, both privately and in municipal positions, while ineligible to do so. She clearly was aware of her periods of ineligibility to practice, as evidenced by her repeated curing of the very deficiencies – both regarding the CPF and the IOLTA program – for which the Court had declared her ineligible. Yet, despite her known periods of ineligibility, respondent represented clients as a municipal public defender, and made appearances as counsel on legal matters for her family. As such, respondent failed to abide by the Court’s Orders, in violation of RPC 3.4(c), and repeatedly practiced law while ineligible, in violation of RPC 5.5(a)(1).

As cited by the DEC, in Clausen, the attorney consented to the imposition of a reprimand, despite a claimed unawareness of his ineligibility to practice law for a CPF violation. Like respondent, Clausen made late payments and cured deficiencies to regain his eligibility. Under these circumstances, we determined that Clausen was, at a minimum, constructively aware of his ineligible status. We noted that he, like respondent, was a solo practitioner, who knew that payments to the CPF were required annually and must have known that he had not made those payments. On that basis, we determined that a reprimand was warranted. In the Matter of Paul Franklin Clausen, DRB 13-010 (April 22, 2013). The Court agreed. In re Clausen, 213 N.J. 461 (2013). Notably, we also cited Clausen in the consent to discipline involving respondent’s current law

partner, which resulted in a reprimand. In the Matter of Nancy Kennedy Brent, DRB 17-202 (September 22, 2017); In re Brent, 231 N.J. 131 (2017).

Here, respondent conceded that she had practiced law while ineligible. Although she testified regarding her medical problems, respondent failed to demonstrate a nexus between those problems and her inability to timely pay her fees to the CPF and to meet her IOLTA obligations. Indeed, respondent testified that she was able to perform her public defender duties, albeit, by asking for help when she felt she needed it.

Respondent, as a public figure in her community, may have been under the watchful eye of the citizens and subject to more scrutiny than the average attorney. However, respondent presented no evidence that she has been treated unfairly in this process or that she is undeserving of discipline. The facts demonstrate that respondent repeatedly practiced law while ineligible and, thus, violated the Rules.

Finally, respondent's contentions that she was unaware of her ineligibility and had not received the notices of ineligibility are without merit. Respondent had received past notices and paid those fees. Therefore, we determine that respondent was well aware of her responsibilities and her resulting administrative ineligibility to practice law was the result of not meeting them.

In sum, we find that respondent violated both RPC 3.4(c) and RPC

5.5(a)(1). The sole issue left for our determination is the appropriate quantum of discipline 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 Perez, 240 N.J. 173 (2019) (reprimand for attorney who, while serving as attorney for sellers in a real estate transaction, was notified by buyers' counsel that he was ineligible to practice law; respondent reassured buyers' counsel that he would send proof of eligibility, which he did not do in the ensuing week, during which he continued to participate in correspondence, document review, and provision of a rider related to the transaction); 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).

At oral argument, we questioned the presenter about the timeline of this disciplinary matter – in particular, that the 2020 complaint cited misconduct that occurred from 2009 through 2013. The presenter stated that the matter was assigned to her in February 2019 and that she was unsure of the cause of the intervening delay. The presenter also noted that there is no “time limitation for grievances to be brought,” which we interpret as a reference to R. 1:20-7 (“[t]here are no time limitations with respect to the initiation of any discipline or disability matter”).

Respondent’s attorney argued that respondent’s conduct “arguably was not unethical from a moral point of view,” and that the “only thing [respondent] was guilty of is not being cognizant of the attorney registration and IOLTA deadlines in the face of personal hardship.” However, when asked if respondent was attending to her practice during the periods of her ineligibility, respondent’s

attorney answered in the affirmative. When questioned as to why she was unable to conform to the Rules of Court during this time, respondent's attorney answered that she "wasn't attending to her practice to the level that most attorneys . . . who practice full time do."

We find that the only aggravating factor to consider is respondent's refusal to take full responsibility for her misconduct. In mitigation, respondent has an unblemished disciplinary history in fifteen years as a member of the bar.

Chair Gallipoli and Members Joseph, Petrou, and Rivera voted to impose a reprimand. In their view, respondent indicated that she was able to attend to her public office positions, despite her medical issues, and, therefore, should have been able to attend to the Rules of Court, including staying current with her administrative responsibilities as a member of the bar.

Vice-Chair Singer and Members Campelo, Hoberman, and Menaker voted to impose an admonition. The Vice-Chair and these members agree that the passage of time in this case, nine to twelve years since the misconduct occurred, is significant mitigation and warrants an admonition, and noted that no clients were harmed by respondent's misconduct.

To conclude, as set forth above, we are divided in respect of the discipline to impose on respondent.

Member Boyer 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 Leah A. Vassallo
Docket No. DRB 21-040

Argued: May 20, 2021

Decided: August 9, 2021

Disposition: Other

<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:	4	4	1



Johanna Barba Jones
Chief Counsel