

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket Nos. DRB 13-039 and 13-019
District Docket Nos. XIV-2012-0388E
and IX-2011-035E

IN THE MATTERS OF
STEVEN E. SAVAGE
AN ATTORNEY AT LAW

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Decision

Decided: July 24, 2013

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

We consolidated the above-referenced defaults for the purpose of imposing discipline. For the reasons expressed below, we determine that a censure is the appropriate discipline for respondent's combined violations.

Respondent was admitted to the New Jersey bar in 2003. At the relevant time, he maintained a law office in Newark, New Jersey. He has no history of final discipline. He was, however, temporarily suspended, on April 16, 2013, for failure to cooperate with the Office of Attorney Ethics (OAE) investigation. In the Matter of Steven E. Savage, 213 N.J. 378 (2013).

DRB 13-039 – DISTRICT DOCKET NO. XIV-2012-0388E

This matter was before us on a certification of default filed by the OAE, pursuant to R. 1:20-4(f). The three-count complaint charged respondent with having violated RPC 1.15(d) and R. 1:21-6(i) (failing to produce attorney records) (recordkeeping improprieties) and RPC 8.1(b) (failure to comply with a lawful demand for information from a disciplinary authority).

Service of process was proper in this matter. By order effective September 24, 2012, respondent was placed on the Fund's list of ineligible attorneys, pursuant to R. 1:28-2(a). On December 7, 2012, the OAE sent copies of the complaint, by regular and certified mail, to respondent's West Orange, New Jersey residence. The certified mail was returned as unclaimed. The regular mail was not returned.

On January 3, 2012, the OAE sent a letter to the same address, by certified mail. The letter notified respondent that, if he did not file an answer to the ethics complaint within five days of the date of the letter, the allegations of the complaint would be deemed admitted, the record would be certified to us for the imposition of discipline, and the complaint would be deemed amended to include a willful violation or RPC 8.1(b). The certified mail was returned as unclaimed.

On January 24, 2013, the OAE sent a letter to respondent at the same address, by United Parcel Service overnight delivery and by regular mail. The letter attached the complaint and prior letters and gave respondent an additional five days to file a verified answer to the complaint. A summary form from the UPS tracking system indicated that, on January 25, 2013, delivery was made. The delivery slip was signed by "Savage." The regular mail was not returned.

As of the date of the certification of the record, respondent had not filed an answer.

We now turn to the allegations of the complaint.

By letter dated July 9, 2012, TD Bank notified the OAE that there was an overdraft in respondent's attorney trust account. On July 5, 2012, respondent's transfer of \$80 from his trust account to his business account created an overdraft because he had a zero balance in his trust account. The bank then charged an overdraft fee of \$35, which resulted in a negative balance of \$115 in the trust account.

By letter dated July 17, 2012, sent to respondent's Newark office, the OAE requested that he provide, within ten business days, a written explanation for the overdraft and copies of his banking records. Respondent did not reply. On August 9, 2012, the OAE faxed a letter to respondent, informing him that,

because he had not replied to its earlier letter, it was treating the overdraft as "a misappropriation." The OAE demanded a written explanation and bank records by August 13, 2012. Again, respondent did not reply.

For respondent's failure to produce the requested records, the complaint charged him with having violated RPC 8.1(b), RPC 1.15(d), and R. 1:21-6(i) (failure to comply with the requirements of R. 1:21-6 regarding the maintenance, availability and preservation of accounts and records or failure "to produce or to reply completely to questions regarding such records as required shall be deemed to be in violation of RPC 1.15(d) and RPC 8.1(b)").

Thereafter, by letter dated August 31, 2012, sent by regular and certified mail to both respondent's home and office addresses, the OAE notified him, that because of his failure to comply with the OAE's requests, it was treating the matter as a "full-fledged ethics investigation." The OAE gave respondent ten days to provide a written explanation for the overdraft notification and to provide his trust and business accounts records. It also warned him that his continued failure to cooperate would subject him to the filing of a formal ethics complaint, charging him with a violation of RPC 8.1(b). The letter sent by certified mail to respondent's office address was

delivered. The letter sent by regular mail was not returned. The certified letter sent to his home address was returned as unclaimed. The regular mail was not returned. Respondent did not reply to the OAE's letter.

By Court Order dated September 19, 2012, respondent was placed on the Fund's list of ineligible attorneys.

On October 10, 2012, the OAE left messages for respondent on two different telephone numbers. He did not reply to the OAE's messages.

By letters dated October 19, 2012, sent by regular and certified mail to respondent's home address, the OAE scheduled a "demand audit/interview" at its offices, on November 8, 2012. The certified mail was returned as unclaimed. The regular mail was not returned. Respondent neither appeared nor notified the OAE that he would not appear at its offices.

The complaint charged respondent with having violated RPC 8.1(b) and R. 1:20-3(g)(3).

The OAE obtained respondent's records from TD Bank. The records showed that Carol Savage was a signatory on respondent's trust account. Savage is not admitted to practice law in New Jersey. Her signature appeared on a July 27, 2012 \$2,000 transfer from respondent's trust account to his business account. For this conduct, the complaint charged respondent with

having violated RPC 1.15(d) and R. 1:21-6(c)(1)(A) (restricting authorized signatories on trust accounts to attorneys admitted to practice in this State).

DRB 13-019 – DISTRICT DOCKET NO. IX-2011-0035E

This matter was before us on a certification of default filed by the District IX Ethics Committee (DEC), pursuant to R. 1:20-4(f). The two-count complaint charged respondent with having violated RPC 1.1, presumably (a) (gross neglect), RPC 1.1(b) (pattern of neglect), RPC 1.3 (lack of diligence), and RPC 8.1(b) (failure to reply to a lawful demand for information from a disciplinary authority).

Service of process was proper in this matter. On June 29, 2012, the DEC sent copies of the complaint, by regular and certified mail, to respondent's home and office addresses. Receipt of the certified mail to respondent's home address was acknowledged on July 2, 2012. The regular mail to that address was not returned. Receipt of the certified mail to respondent's office address was acknowledged on July 3, 2012. The regular mail to that address was not returned.

On September 20, 2012, the DEC sent a letter, by regular and certified mail, to respondent's home address. The letter notified respondent that, if he did not file a verified answer

within five days of the date of the letter, the allegations of the complaint would be deemed admitted, the record would be certified to us for the imposition of discipline, and the complaint would be deemed amended to include a willful violation of RPC 8.1(b). The certified mail was returned as unclaimed. The regular mail was not returned.

On October 8, 2012, the DEC sent yet another letter, by regular and certified mail, to respondent's office address. The letter provided the same warnings set forth in the DEC's September 20, 2012 letter. Receipt of the certified mail was acknowledged on October 12, 2012. The regular mail was not returned. As of the date of the certification of the record, November 9, 2012, respondent had not filed an answer to the complaint.

The complaint in this matter alleged that Daniel Furesz, who was detained at a Petersburg Medium Federal Correctional Institution in Petersburg, Virginia, retained respondent to represent him for three separate indictable matters venued in Bergen County. Afterwards, when Furesz was indicted on federal charges, respondent agreed to represent him on those charges as well.

Respondent charged Furesz a \$25,000 retainer for all of the matters. Presumably, as payment towards the retainer, respondent

received from Furesz "a \$10,000.00 bail assignment from one of the Bergen County matters, three payments of \$250.00 and he took possession of two vehicles in lieu of the remaining \$12,000.00."

Furesz complained that respondent did not adequately communicate with him because respondent visited him infrequently and often did not reply to telephone messages or letters. According to Furesz, respondent "inaccurately" informed him that one of his Bergen county matters had been dismissed, when it had actually been remanded to a municipal court and was still pending.

Furesz further complained that respondent did not provide him with discovery materials in the federal matter for eighteen months, and that the materials were, nevertheless, incomplete. Also, although Furesz had provided respondent with original documents to use in his defense, they were either not presented to the court, or not returned to Furesz, despite the fact that he had requested their return several times.

Furesz also questioned the effectiveness of respondent's representation, claiming that he had failed to make important arguments in his federal matter and failed to file a motion. Furesz asserted that respondent and "other individuals" had bullied him into accepting a plea agreement in the federal matter.

Count one of the complaint charged that respondent's failure to keep Furesz adequately and accurately informed and his failure to present arguments and/or evidence in Furesz' defense were violations of RPC 1.1, presumably (a), and RPC 1.3, and that this matter, when combined with respondent's "other acts of neglect," demonstrated a pattern of neglect.

Count two alleged that, on December 19, 2011, respondent submitted a reply to the DEC investigator's November 28, 2011 request for information, but did not attach any documents to it.¹ Therefore, by letters dated March 7 and April 10, 2012, the investigator requested a copy of respondent's file, to no avail.

On May 17, 2012, the investigator sent a final letter to respondent, warning him that his failure to submit the requested materials, within ten days, could result in the filing of a complaint against him. The letter was sent by regular and certified mail to respondent's home and office addresses. Only a certified mail receipt to respondent's office address was returned, showing delivery. Neither of the letters sent to both address by regular mail were returned.

¹ Count two of this complaint uses the term "ethics complaint," instead of the term "grievance."

As of the date of the certification of the record, respondent had not submitted the requested materials or otherwise communicated with the investigator.

This count charged respondent with having violated RPC 8.1(b) and, again, RPC 1.1(b).

The facts recited in each complaint support the charges of unethical conduct. Respondent's failure to file answers is deemed an admission that the allegations of the complaints are true and that they provide a sufficient basis for the imposition of discipline. R. 1:20-4(f).

In DRB 13-039, the allegations of the complaint support all of the charged rule violations. Respondent failed to cooperate with the OAE (RPC 8.1(b)). Not only did he fail to provide the information that the OAE repeatedly requested, but he failed to appear for the November 8, 2012 demand audit/interview and failed to inform the OAE that he would not be attending. Respondent also violated R. 1:21-6(c)(1)(A), by permitting an individual not admitted as an attorney in New Jersey to be a signatory on his trust account, a violation of RPC 1.15(d).

In the Furesz matter (DRB 13-019), the complaint did not charge respondent with having violated RPC 1.4(b) for failure to adequately communicate with Furesz, or RPC 1.16(d) for failure to provide Furesz with the discovery materials he had requested,

or RPC 1.4(c) for failure to explain a matter to the extent reasonably necessary to permit Furesz to make informed decisions about the representation, specifically the plea agreement. We, therefore, cannot find that respondent committed these rule violations.

Similarly, we are unable to find that respondent violated RPC 1.1, RPC 1.3 or RPC 1.1(b). The complaint did not allege sufficient facts to support a finding that respondent grossly neglected Furesz' matters or that he lacked diligence in representing him. Therefore, there cannot be a violation of RPC 1.1(b) as well. The allegations support a finding that respondent violated RPC 8.1(b) only, for his failure to reply to the investigator's requests for information about the grievance.

In the combined cases, we find that respondent violated RPC 8.1(b) in both matters and RPC 1.15(d) in the first matter.

Recordkeeping irregularities ordinarily are met with an admonition, as long as they have not caused a negligent misappropriation of clients funds. See, e.g., In the Matter of Christopher J. Carkhuff, DRB 11-062 (May 20, 2011) (attorney kept inactive client balances in his trust account for extended periods of time); In the Matter of Thomas F. Flynn, III, DRB 08-359 (February 20, 2009) (for extended periods of time, attorney left in his trust account unidentified funds, failed to satisfy

liens, allowed checks to remain outstanding, and failed to perform one of the steps of the reconciliation process; no prior discipline); In the Matter of Jeff E. Thakker, DRB 04-258 (October 7, 2004) (attorney failed to maintain a trust account in a New Jersey banking institution); In the Matter of Arthur G. D'Alessandro, DRB 01-247 (June 17, 2002) (numerous recordkeeping deficiencies); In the Matter of Marc D'Arienzo, DRB 00-101 (June 29, 2001) (failure to use trust account and to maintain required receipts and disbursements journals, as well as client ledger cards); In the Matter of Christopher J. O'Rourke, DRB 00-069 (December 7, 2000) (attorney did not keep receipts and disbursements journals, as well as a separate ledger book for all trust account transactions); and In the Matter of Arthur N. Field, DRB 99-142 (July 19, 1999) (attorney did not maintain an attorney trust account in a New Jersey banking institution). But see In re Colby, 193 N.J. 484 (2008) (reprimand for attorney who violated the recordkeeping rules; although the attorney's recordkeeping irregularities did not cause a negligent misappropriation of clients' funds, he had been previously reprimanded for the same violations and for negligent misappropriation as well).

Likewise, admonitions are ordinarily imposed for failure to cooperate with disciplinary authorities, if the attorney does

not have an ethics history. See, e.g., In the Matter of Raymond Oliver, DRB 12-232 (November 27, 2012); In re Ventura, 183 N.J. 226 (2005); In the Matter of Kevin R. Shannon, DRB 04-152 (June 22, 2004); In the Matter of Keith O. D. Moses, DRB 02-248 (October 23, 2002); In the Matter of Jon Steiger, DRB 02-199 (July 22, 2002); In the Matter of Grafton E. Beckles, II, DRB 01-395 (December 21, 2001); In the Matter of Andrew T. Brasno, DRB 97-091 (June 25, 1997); and In the Matter of Mark D. Cubberley, DRB 96-090 (April 19, 1996).

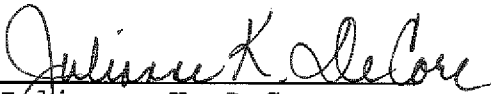
Respondent has no history of discipline. However, he failed to cooperate not only with the DEC but also with the OAE and he engaged in a recordkeeping impropriety. Because respondent defaulted in these proceedings, not once, but twice, "a respondent's default or failure to cooperate with the investigative authorities operates 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), we determine that a censure is the appropriate discipline for respondent's combined violations.

Members Gallipoli and Zmirch voted to impose a three-month suspension. Member Doremus 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 Frost, Chair

By: 
Julianne K. DeCore
Chief Counsel

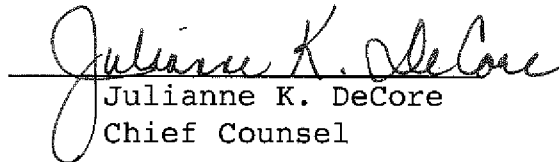
SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matters of Steven E. Savage
Docket No. DRB 13-019 and DRB 13-039

Decided: July 24, 2013

Disposition: Censure

<i>Members</i>	Disbar	Three-month Suspension	Censure	Dismiss	Disqualified	Did not participate
Frost			X			
Baugh			X			
Clark			X			
Doremus						X
Gallipoli		X				
Yamner			X			
Zmirich		X				
Total:						


Julianne K. DeCore
Chief Counsel