

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 14-286
District Docket No. XIV-2013-0086E

IN THE MATTER OF
WAYNE ANTONIO AUTRY
AN ATTORNEY AT LAW

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Decision

Decided: March 13, 2015

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

This matter was before us on a certification of default, filed by the Office of Attorney Ethics (OAE) pursuant to R. 1:20-4(f). The two-count complaint charged respondent with having violated RPC 1.15(d) and R. 1:21-6 (recordkeeping improprieties), as well as RPC 8.1(b) (failure to comply with a lawful demand for information from a disciplinary authority). For the reasons detailed below, we determine to impose a reprimand.

Respondent was admitted to the New Jersey bar in 2001. At the relevant time, he maintained an office in Newark, New Jersey. He has no history of discipline.

Service of process was proper in this matter. On April 16, 2014, the OAE sent a copy of the complaint, by certified and regular mail, to respondent's last known office address, One Gateway Center, Suite 2600, Newark, New Jersey 07106. On May 23, 2014, the certified mail was returned with the handwritten notation "unknown." On May 6, 2014, the regular mail was returned, stamped "return to sender, unable to forward."

On May 13, 2014, the OAE sent a copy of the complaint to respondent's last known home address, listed in the attorney registration system. On June 9, 2014, the certified mail was returned as unclaimed. The regular mail was not returned. Respondent did not file an answer to the complaint.

On July 8, 2014, the OAE sent a letter, by regular and certified mail, to respondent's home address. 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 of RPC 8.1(b). On July 2014, the certified mail was returned as unclaimed. The regular mail was not returned.

As of the date of the certification of the record, September 9, 2014, respondent had not filed an answer.

On February 22, 2013, respondent entered into an agreement in lieu of discipline with the OAE, pursuant to R. 1:20-3(i)(2)(B), admitting that he violated RPC 1.15(d) and R. 1:21-6. One of the conditions to the agreement required respondent to attend the New Jersey State Bar Association's Continuing Legal Education Program "Introduction to New Jersey Trust and Business Accounting," within six months of the date of the OAE's acceptance of the agreement.

On June 14, 2013, respondent informed the OAE that he had satisfied that condition by listening to an audio version of the accounting course and that he had requested continuing legal education credits (CLE) for having done so.

By letter dated August 26, 2013, the OAE informed respondent that, under the agreement, (1) he was required to "attend" the accounting seminar, (2) he agreed that he would not apply the course to his CLE requirements, and (3) if he were unable to satisfy the condition by October 12, 2013, he was to contact the OAE. The letter requested that respondent provide proof, by September 6, 2013, that he had corrected the recordkeeping violations detailed in the agreement. Respondent did not provide the requested proof by the OAE's deadline.

By certified letter dated October 8, 2013, the OAE directed respondent to satisfy the provisions of the agreement (proof that he had corrected the recordkeeping deficiencies and that he had attended the seminar), by October 21, 2013. Although, on October 11, 2013, someone from respondent's office signed the certified mail receipt card, respondent did not comply with the OAE's direction.

As of the date of the complaint, April 14, 2014, respondent had not fulfilled the conditions of the agreement. The complaint, thus, charged him with having violated RPC 8.1(b), for failure to cooperate with disciplinary authorities.

The agreement in lieu of discipline resulted from the following conduct. On April 21, 2011, TD Bank notified the OAE that a \$600 check drawn on respondent's trust account had been returned for insufficient funds. As a result, on August 10, 2011, the OAE conducted a demand audit of respondent's trust and business accounts for the period February 1, 2011 to July 31, 2011. Respondent informed the OAE that, over the "last couple of years," he had had no legal clients. He was self-employed and "involved in Youth in Unity," a New York non-profit organization.

According to respondent, the overdraft was caused by a check to Andre Lynch, mistakenly issued from his trust account,

rather than from the account associated with Youth in Unity. No client funds were affected, however, because, at that time, the only funds in the account were respondent's personal funds.

Respondent told the OAE that he maintained a check book, client ledger sheets, original or digital copies of checks, and receipts and disbursements journals. He admitted that he did not conduct three-way reconciliations for the trust account and did not maintain original or digital copies of deposit slips. During the audit, he did not produce monthly bank statements for his trust or business accounts.

The demand audit revealed the following recordkeeping deficiencies:

- a. Failure to perform monthly three-way reconciliation. R. 1:21-6(c)(1)(H).
- b. Trust receipts journal did not fully describe each item deposited. R. 1:21-6(c)(1)(A).
- c. Trust disbursements journals do not fully describe the purpose of each disbursement. R. 1:21-6(c)(1)(A).

[C¶II.14.]¹

According to the complaint, respondent did not correct the deficiencies, as required by the agreement, thereby violating RPC 1.15(d) and R. 1:21-6.

¹ C refers to the April 14, 2014 ethics complaint.

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

Respondent's failure to reply to the OAE's request for information and failure to file an answer to the ethics complaint are violations of RPC 8.1(b).

Respondent also violated RPC 1.15(d). Because he had no client funds in his trust account, presumably during the period that the demand audit covered, he was not required to comply with the cited recordkeeping requirements. Nevertheless, respondent violated R. 1:21-6(a)(1) by having his personal funds in the trust account. A violation of R. 1:21-6 is a violation of RPC 1.15(d).

Recordkeeping irregularities ordinarily are met with an admonition, so long as they have not caused a negligent misappropriation of clients' funds. See, e.g., In the Matter of Sebastian Onyi Ibezim, Jr., DRB 13-405 (March 26, 2014) (attorney maintained outstanding trust balances for a number of clients, some of whom were unidentified); In the Matter of Stephen Schnitzer, DRB 13-386 (March 26, 2014) (an audit conducted by the OAE revealed several recordkeeping

deficiencies; the attorney also commingled personal and trust funds for many years; prior admonition for unrelated conduct); In the Matter of Morris J. Kuzrok, DRB 12-145 (July 20, 2012) (admonition for attorney whose records revealed several recordkeeping deficiencies; he also failed to provide a new and complete certification to the OAE that his records had been corrected within the time allotted, violations of RPC 1.15(d) and RPC 8.1(b)); 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); 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); and 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).

Failure to cooperate with disciplinary authorities also generally results in an admonition, if the attorney does not have an ethics history. See, e.g., In the Matter of Richard D. Koppenaar, DRB 13-164 (October 21, 2013) (failure to cooperate

with an ethics committee's attempts to obtain information about the attorney's representation of a client); In the Matter of Lora M. Privetera, DRB 11-414 (February 21, 2012) (attorney submitted an inadequate reply to an ethics grievance; thereafter, she failed to cooperate in the ethics investigation until finally retaining ethics counsel to assist her); In the Matter of Douglas Joseph Del Tufo, DRB 11-241 (October 28, 2011) (attorney did not reply to the ethics committee's investigation of the grievance and did not communicate with the client); and In the Matter of James M. Docherty, DRB 11-029 (April 29, 2011) (attorney failed to comply with the ethics committee's investigator's request for information about the grievance; the attorney was also guilty of gross neglect and failure to communicate with the client).

While, ordinarily, respondent's conduct might warrant an admonition, we determine to impose a reprimand, because he defaulted in this matter. "[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).

Vice-Chair Baugh 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 Wayne A. Autry
Docket No. DRB 14-286

Decided: March 13, 2015

Disposition: Reprimand

Members	Disbar	Suspension	Reprimand	Dismiss	Disqualified	Did not participate
Frost			X			
Baugh						X
Clark			X			
Gallipoli			X			
Hoberman			X			
Rivera			X			
Singer			X			
Yamner			X			
Zmirich			X			
Total:			8			1


Ellen A. Brodsky
Chief Counsel