Supreme Court of New Jersey
Disciplinary Review Board
Docket No. DRB 22-106
District Docket No. XIV-2018-0675E

In the Matter of	:
Wardell Huff	:
An Attorney at Law	:

Decision

Argued: October 20, 2022

Decided: December 7, 2022

Amanda Figland appeared on behalf of the Office of Attorney Ethics.

Elliot Abrutyn 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 disciplinary stipulation between the Office of Attorney Ethics (the OAE) and respondent. Specifically, respondent stipulated to having violated RPC 1.4(a) (failing to inform a prospective client of how, when, and where the client may communicate with the attorney); RPC

1.4(c) (failing to explain a matter to the extent reasonably necessary to permit the client to make informed decisions); RPC 1.5(a) (charging an unreasonable fee); RPC 1.5(b) (failing to set forth, in writing, the basis or rate of the attorney's fee); RPC 1.8(h)(1) (making an agreement prospectively limiting the attorney's liability to a client for malpractice); RPC 1.15(c) (failing to safeguard funds); RPC 1.15(d) (failing to comply with the recordkeeping requirements of R. 1:21-6); RPC 5.3(a) and (b) (failing to supervise nonlawyer staff); RPC 5.4(c) (permitting a person who recommends, employs, or pays the attorney to render legal services for another to direct or regulate the attorney's professional judgment in rendering legal services); RPC 5.5(a)(2) (assisting another in the unauthorized practice of law); RPC 7.1(a) (1) and (4) (making a false or misleading communication about the lawyer or the lawyer's services); RPC 7.5(b) (failing to identify the attorney's name in advertisements and communications with clients); RPC 8.1(b) (failing to cooperate with disciplinary authorities); and RPC 8.4(c) (engaging in conduct involving dishonesty, fraud, deceit or misrepresentation).

For the reasons set forth below, we determine that a censure is the appropriate quantum of discipline for respondent's misconduct.

Respondent earned admission to the New Jersey bar in 2005, the District of Columbia bar in 2008, and the New York bar in 2013. He has no prior discipline in New Jersey.

During the relevant timeframe, respondent maintained a practice of law with a primary office in Leesburg, Virginia. Beginning in 2010, respondent also worked for Defense Lawyers, P.A., also known as the Stein Law Group (the Firm), with a primary office located in Boca Raton, Florida. The Firm employed respondent as its sole New Jersey attorney.

Respondent and the OAE entered into a disciplinary stipulation, dated June 14, 2022, which sets forth the following facts in support of respondent's admitted ethics violations.

The New Jersey Committee on the Unauthorized Practice of Law Investigation

In his New Jersey private practice, respondent primarily handled bankruptcy matters and maintained attorney trust and business accounts at Wells Fargo.

On December 9, 2016, a credit union sent the New Jersey Committee on the Unauthorized Practice of Law (the CUPL) a copy of a November 28, 2016 letter from the Firm. In that letter, which was signed by a nonlawyer, the Firm

stated that it represented a New Jersey client, enclosed a signed power of attorney, and requested information about the client's debt. On behalf of the CUPL, Anne Mohan, Esq., investigated the matter and could not identify a licensed New Jersey attorney at the Firm. The CUPL secretary, however, spoke with Lee Stein, Esq.,[1] the Firm's managing partner, who told her that the Firm maintained an association with respondent's New Jersey law firm. Therefore, on May 22, 2017, Mohan sent a letter to both the Firm and respondent requesting information related to the Firm's alleged unauthorized practice of law and failure to comply with New Jersey's Court Rules.

Two days later, on May 24, 2017, respondent replied to Mohan, informing her that he maintained an attorney trust account at Wells Fargo, but did not know the "local" bank requirements. During a telephone conversation, respondent also told Mohan that he did not know the New Jersey client referenced in the Firm's November 2, 2016 letter.

Next, on September 1, 2017, Mohan sent a letter to Stein, copying respondent, informing him that the Firm (1) had violated RPC 7.5(a) and (b) and R. 1:21-1A(c) by using the name Defense Lawyers and having clients sign a power of attorney authorizing it alone, without designating a responsible

[1] Lee Stein, Esq., is licensed to practice law in Florida, not New Jersey.

attorney, to serve as legal counsel, (2) must obtain a certificate of authority from the Secretary of State in order to render legal services in New Jersey as an out-of-state law firm, as N.J.S.A. 14A:17-10(b) requires, and (3) must maintain attorney trust and business accounts in New Jersey, as R. 1:21-6(a) requires. Mohan requested proof of the Firm's compliance.

The following month, on October 11, 2017, Mohan sent a follow-up letter to Stein, again copying respondent, noting that she had requested "the[] materials on more than one occasion and they have yet to be provided."

Four months later, on February 12, 2018, the Firm, through its counsel, Robby Birnbaum, Esq., replied to the CUPL, claiming that "[respondent] is involved with all New Jersey clients from the time they retain the Firm until their matters are resolved through negotiations or litigation." The Firm further represented that it had complied with the applicable Rules and enclosed a copy of the revised power of attorney form, with the letterhead listing the firm name as Stein & Associates, P.C., and respondent as being admitted in "DC, NJ, NY, Dist. of MD." It also represented that respondent "provided evidence of the existence and use of the required IOLTA Account in New Jersey, and the Firm ha[d] ensured that the professional and ethical requirements associated with New Jersey law practice are complied with."

On February 25, 2018, Mohan sent a letter to Birnbaum, copying respondent, stating that the Firm remained noncompliant and requesting, for a third time, the outstanding documents. Specifically, the Firm had failed to produce proof of attorney trust and business accounts in New Jersey and the required certificate of authority from the New Jersey Secretary of State. Additionally, the revised power of attorney form still incorrectly identified the Firm, instead of an attorney, as responsible for client matters.

Birnbaum did not reply to Mohan's February 25, 2018 letter. Thus, on April 4, 2018, Mohan sent a follow-up letter, again copying respondent.

On April 20, 2018, Birnbaum sent a letter to Mohan, providing a second revised power of attorney form and proof that Stein & Associates, P.C. had registered with the New Jersey Secretary of State as a domestic corporation. Birnbaum stated that "Stein is still in the process of opening the trust account for Stein & Associates, P.C." and that he would provide proof of compliance within the next couple of weeks.

The following month, on May 17, 2018, Mohan sent a follow-up letter to Birnbaum, again copying respondent, requesting proof of the New Jersey bank accounts opened on behalf of Stein & Associates.

Two months later, on July 17, 2018, Birnbaum sent a letter to Mohan, informing her that the Firm had a problem registering under Stein & Associates

and, instead, on July 10, 2018, had established the Stein Law Group, P.A. in New Jersey. Birnbaum admitted that the New Jersey bank accounts had not been opened and requested an additional thirty days to comply. On July 18, 2018, Mohan sent a follow-up letter to Birnbaum, copying respondent, requesting proof of the required the New Jersey bank accounts.[2]

Two months later, on September 17, 2018, Birnbaum sent an e-mail to Mohan, representing that the Firm had opened the required bank accounts at "BBT in New Jersey;" however, he did not provide proof of those accounts. Thus, later that same date, Mohan sent a reply e-mail, requesting proof of the required bank accounts.

Almost three months later, on December 3, 2018, after no documentation had been provided, Mohan sent a follow-up e-mail to Birnbaum.

On December 5, 2015, Birnbaum sent an e-mail to Mohan, enclosing a Branch Banking and Trust Bank (BB&T) attorney business account (BB&T1) transaction receipt, which Mohan could not confirm as a financial institution in New Jersey in compliance with the applicable Rules. On December 12, 2018, Birnbaum subsequently represented that Stein would obtain additional documentation from BB&T; however, he failed to do so.

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[2] This letter appears to overlap Birnbaum's letter from the day prior.

The OAE's Recordkeeping Investigation

On December 14, 2018, the CUPL referred this matter to the OAE for a disciplinary investigation. The following month, on January 18, 2019, the OAE notified respondent of the ethics grievance against him and requested his reply. On February 15, 2019, respondent replied to the OAE, stating that did not know what he "may have done wrong" and representing that the Firm maintained a bank account with BB&T.

During a subsequent telephone conversation, respondent told the OAE that Stein had opened BB&T attorney trust and business accounts for the Firm approximately three to five months earlier. He further stated that he had not been involved in the opening of either account, had no signatory authority, and did not handle the Firm's client funds or recordkeeping obligations.

The OAE replied to respondent, reminding him of his nondelegable duty, as the Firm's only New Jersey attorney, to ensure that the Firm complied with all recordkeeping requirements of R. 1:21-6, and providing him with a copy of its *Outline of Recordkeeping Requirements under RPC 1.15 and R. 1:21-6*.

Later, on March 4, 2019, the OAE sent a letter to respondent, requesting copies of the attorney trust and business account records for New Jersey matters handled by the Firm during the previous five months. In reply, respondent produced five months of attorney business account statements, for the BB&T1

account, demonstrating that the business account had been opened on August 21, 2018 and $15,000 had been deposited the following month, but that it had otherwise been inactive. Respondent failed to produce any New Jersey attorney trust account documents for the Firm. However, on March 14, 2019, he produced a March 13, 2019 e-mail between Stein and BB&T, wherein BB&T stated "there are no statements [for the attorney trust account] because the account was a zero balance, there is nothing to produce."

Thereafter, on April 4, 2019, the OAE directed respondent to produce all client ledger cards, retainer agreements, powers of attorney, and bank records for all New Jersey client matters handled by the Firm between June 1, 2016 and February 28, 2019. The OAE also scheduled respondent for a demand audit covering that same period.

The OAE subpoenaed the Firm's financial records with BB&T, which demonstrated that, on August 21, 2018, the Firm opened BB&T1 and an attorney trust account (ATA1). Both accounts had been opened with a Florida branch of BB&T and Stein signed the signature cards, clearly identified as "BB&T Signature Card (Florida)."

On June 14, 2019, through his counsel, Karl Baumle, Esq., respondent provided a partial reply to the OAE's April 4, 2019 document request. Specifically, respondent produced a master list of the Firm's 147 New Jersey

clients; client ledgers; retainer agreements; partial bank records, showing disbursements from ATA1 on behalf of clients; a list of payments made by the Firm to respondent; a certificate of incorporation; and a change of registered agent certificate. However, at that time – almost two years after Mohan's initial letter – the Firm still did not maintain New Jersey client funds in a New Jersey attorney trust account, as R. 1:21-6 requires.

The records also demonstrated that, despite its representations to the CUPL that it would change its name, the Firm continued to use the name Defense Lawyers, P.A. in communications with clients. The Firm's power of attorney form also continued to identify Defense Lawyers as the responsible attorney and utilized a Florida address, instead of a New Jersey address. Similarly, the Firm's retainer agreements continued to state that Defense Lawyers, instead of respondent, represented the clients.

On June 18, 2019, respondent appeared for the demand audit, along with Baumle and David Schnobrick, Esq., of the Firm's Florida office. There, respondent stated that, from June 1, 2013 to that date, he had been the only New Jersey attorney handing matters for the Firm. He also stated that, from June 1, 2016 through February 28, 2019, he did not have signatory authority on any of the Firm's financial accounts.

At the demand audit, Baumle maintained that, in September 2018, the Firm attempted to open the required financial accounts in New Jersey but that BB&T had made a mistake. Respondent stated that, in March 2019, the Firm opened a new attorney trust account (ATA2) and business account (ABA) with BB&T, in New Jersey. The Firm then registered the ATA2 as its New Jersey IOLTA account.

Although respondent helped the Firm verify that BB&T had been an approved New Jersey bank, he did not know who at the Firm physically opened the new accounts. Respondent had signatory authority for the ATA2 but did not know if he had such authority for the ABA. He admittedly still did not handle New Jersey client funds, monitor the Firm's recordkeeping practices to ensure compliance with R. 1:21-6, or know the individual responsible for reconciling the accounts for the Firm's New Jersey clients.

On June 21, 2019, respondent provided updated client ledger cards and an ATA2 deposit slip, demonstrating that $154,798.79 in client funds had been deposited in the account the day prior.

Thereafter, the OAE expanded its investigation and, on August 23, 2019, requested that respondent produce additional bank records for the period when the Firm held client funds in the Florida bank accounts (June 1, 2013 through

June 20, 2019) and when it deposited New Jersey clients' funds in the New Jersey bank accounts.

Although respondent's September 11, 2019 reply admitted that the Firm failed to comply with R. 1:21-6 and RPC 1.15(d), it again claimed that the failure had been the result of "an error on part of BB&T bank, unbeknownst to Stein Law Group or [respondent], that went undiscovered for a period of time." Respondent, through Baumle, further represented that all New Jersey client funds had been "fully migrated" into the New Jersey ATA2 and that the Firm's retainer agreement had been revised to reflect the Firm's new name of Stein Law Group, P.A., a copy of which would be provided. Respondent, however, failed to provide a copy of the revised document.[3]

On September 20, 2019, respondent sent the OAE additional documentation, specifically, ATA2 and ABA records for April 1 through August 30, 2019.

Next, on September 24, 2019, respondent provided three-way reconciliations, trust account ledgers, and trust account journals. In that letter, respondent also reversed course, admitting that not all the Firm's New Jersey client funds had been transferred to the New Jersey ATA2, despite his

[3] On September 9, 2020, RPC 7.5(a) and R. 1:21-1(A)(c) were amended to no longer require a firm's name to contain the name of an attorney or describe the nature of the firm's legal practice.

representation, less than a month before, that they had been "fully migrated." Respondent provided a variety of excuses for why $49,100.89 in New Jersey client funds had not been deposited in ATA2 until September 23, 2019.

The OAE reviewed the documentation submitted by respondent, which revealed that respondent failed to maintain (1) an attorney trust account in New Jersey, until June 20, 2019, in violation of R. 1:21-6(a)(1); (2) an attorney business account in New Jersey, until June 20, 2019, in violation of R. 1:21-6(a)(2); (3) receipts and disbursement journals, in violation of R. 1:12-(6)(c)(1)(A); (4) monthly three-way reconciliations, in violation of R. 1:21-6(c)(1)(H); (5) trust account checks signed by an attorney licensed to practice in New Jersey, in violation of R. 1:21-6(c)(1)(A); and (6) copies of all bills rendered to clients, in violation of R. 1:21-6(c)(1)(E). Based on those deficiencies, respondent stipulated to having violated RPC 1.15(d) and R. 1:21-6.

Respondent further stipulated to having violated RPC 8.1(b) by failing to (1) fully reply to the OAE's August 23, 2019 requests that he provide records identifying all incoming funds from New Jersey clients and third parties from June 2013 through June 21, 2019, plus a full accounting of legal fees disbursed from client accounts for that same period, and (2) provide the revised retainer agreements, as promised in his September 11, 2019 letter.

Advertising, Retainer Forms, and Communications with Clients

As detailed above, between June 2013 and 2019, respondent had been the only New Jersey attorney employed by the Firm and, thus, was solely responsible for the representation of its New Jersey clients.

The Firm advertised its legal services on the internet. In 2019 and 2020, the Firm continued to advertise under the name Defense Lawyer's, P.A. in New Jersey and its website failed to identify respondent as the attorney responsible for handling New Jersey client matters on behalf of the Firm. Similarly, although the Firm created a new website for Stein Law Group, P.A. in December 2018, that website failed to provided notice to clients who retained Defense Lawyers that respondent would be their New Jersey attorney, because the Firm failed to inform clients of its new name or link the new website to the Defense Lawyers' website and continued to communicate with clients as Defense Lawyers. Based thereon, respondent stipulated to having violated RPC 7.5(b).

Potential New Jersey clients of the Firm initially spoke with nonlawyer staff, via telephone or e-mail, regarding the Firm's legal services and fees. A client interested in retaining the Firm received a packet, including (1) an application; (2) a retainer agreement with Defense Lawyers; (3) a limited power of attorney appointing Defense Lawyers to act as their attorney; (4) an electronic payment authorization; and (5) a form titled "reverification of this program,"

identifying Defense Lawyers, but no specific attorney. Respondent admittedly did not draft or review the retainer forms utilized by the Firm, none of which included his name, until 2018.

Beginning in 2018, Defense Lawyers revised its power of attorney form and began listing eleven attorneys, noting their ability to practice in various jurisdictions, on the letterhead. Although respondent's name appeared on the revised power of attorney form, it did not appear on any other retainer paperwork and the Firm did not provide clients with respondent's contact information, unless or until it referred a matter to him. Although the Rule applies only to prospective clients, the OAE interviewed three of the Firm's clients, none of which could identify the attorney responsible for their matter. Some clients never spoke to respondent or knew him as the New Jersey attorney for the Firm. Others only received that information when they received a notice of appearance, after respondent had filed an answer on their behalf. Respondent, thus, stipulated to having violated RPC 1.4(a), by failing to advise the Firm's prospective New Jersey clients how, when, and where they could communicate with him.

The Firm's manager, Adrian Rivers, referred clients to respondent if litigation had been filed against the client or if respondent personally needed to handle the settlement. Stated differently, Rivers, not respondent, determined if

respondent became involved in a client matter. By virtue of this arrangement, respondent stipulated to having improperly allowed the Firm to direct or regulate his professional judgment, in violation of RPC 5.4(c).

Moreover, respondent did not supervise the nonlawyer staff of the Firm who handled initial communications with potential New Jersey clients. When clients retained the Firm, a paralegal contacted them to ascertain if they had questions, and the nonlawyer staff also negotiated clients' debt with creditors. Respondent admittedly failed to supervise or train the Firm's nonlawyer staff, and he did not know what training and qualifications each possessed. Thus, respondent stipulated to having violated RPC 5.3(a) and (b) by failing to supervise the nonlawyer staff at the Firm who handled client intake, communications, and settlement discussions.

Additionally, (1) the Firm's retainer paperwork informed clients that an attorney oversaw and supervised the nonlawyer staff handling their debt matters, (2) on February 12, 2018, the Firm represented that respondent had been involved in client matters upon the Firm's retention, and (3) on September 11, 2019, the Firm represented that respondent spoke to all potential clients and signed retainer agreements. However, the documents subsequently produced by the Firm revealed the falsity of those representations. Specifically, respondent had not been involved in at least client three matters until litigation had been

filed or he needed to be involved in the settlement. Therefore, respondent also stipulated to having violated RPC 8.4(c) in connection with those misrepresentations.

Respondent, as the Firm's only New Jersey attorney, further stipulated to having assisted the Firm in the unauthorized practice of law, by allowing it to secure New Jersey clients, initiate and manage New Jersey cases, and, in some circumstances, handle New Jersey matters without any involvement by him, in violation of RPC 5.5(a)(2).

Legal Fees

The Firm's clients did not directly pay respondent. Instead, as of June 2019, respondent received a $3,000 per month flat fee from the Firm for all services performed on behalf of the Firm and $650 each time the Firm referred a New Jersey client to him. Respondent did not know when or how the Firm allocated client funds toward legal services and costs, and he did not send bills to clients on behalf of the Firm.

Between January 2014 and February 2019, the Firm used two types of retainer agreements.[4] The Settle retainer agreement included an attorney retainer

[4] The two retainer types are identified herein as the Settle and Croux retainer agreements.

schedule, showing the client's monthly retainer payments to the Firm. It noted the "Firm's standard hourly rate" of $300, but it did not specify whether that rate applied to paralegals or attorneys. The Firm also charged a non-refundable processing fee of $19.99 per month, but it did not explain the necessity of that fee. Clients authorized the Firm to deduct all payments due pursuant to the attorney retainer schedule, via an electronic payment authorization, from the client's checking or savings account.

The Settle retainer agreement also stated that a portion of the client's monthly payment would be divided between an attorney retainer and an escrow account. Instead, however, the Firm held the client's monthly retainer payments in its attorney trust account, until Stein transferred the funds to the Firm's attorney business account.

Additionally, although the Settle retainer agreement stated that the Firm would "bill against the retainer," it said nothing about providing monthly invoices or accountings to the client. Indeed, the Firm failed to provide regular invoices and also failed to reply to Settle's and other clients' requests for an accounting of their legal fees. Thus, the clients did not know the amount of work and time spent on their matters, or the extent of the fees charged.

A review of the Settle documents demonstrated that the Firm billed and removed $240 from the trust account for nineteen months, from March 2015

through October 2016, and $180 during the following ten months, although Settle's matter had been inactive during some of that time. Although the Settle retainer agreement stated that legal fees would be deducted for services performed, Settle did not give the Firm permission to take a flat fee each month. Thus, the Firm did not have authority to deduct the monthly fees from Settle's funds during the inactive periods.

The Firm's modified retainer agreement – the Croux retainer agreement – continued to note the "Firm's standard hourly rate" of $300, and it did not specify if that rate applied to paralegals or attorneys. It still contained the non-refundable $19.99 processing fee, without explanation, and provided that the client funds allocated to the attorney retainer would be held in the Firm's trust account and billed against for work performed.

The Croux retainer agreement had been revised to state that clients would be "provided with a monthly statement and/or phone call detailing the work performed and the cost associated with same." Despite that representation, the Firm failed to provide Croux, and other clients, with invoices or an explanation of the work performed and cost thereof, via mail or telephone, and it further failed to provide that documentation at clients' requests.

The Firm's retainer agreements also either prospectively limited the Firm's malpractice liability to a client or stated that binding arbitration governed

all disputes. There is no indication in the record that potential clients had been informed of their right to consult independent counsel in this regard. The retainers also failed to inform clients of their non-waivable right to pursue fee arbitration in New Jersey, pursuant to R. 1:20A, and stated that the "[j]urisdiction in any legal action is governed solely by Florida law" and "[v]enue in any legal action is governed solely by Palm Beach County, located in the state of Florida."

Based on the above facts, respondent stipulated to having violated RPC 1.4(c), by failing to explain the Firm's fees and charges to clients, prohibiting them from making informed decisions about the representation, and failing to reply to client requests for an accounting. Similarly, he stipulated to having violated RPC 1.15(c) by failing to provide clients with an accounting of the Firm's legal fees drawn against their retainer funds.

Respondent also stipulated to having violated RPC 1.5(a) by charging clients an excessive flat fee every month, regardless of whether work had been performed. He further stipulated to having violated RPC 1.5(b) by failing to set forth the basis or rate of fees in the retainer agreement.

Respondent stipulated to having violated RPC 7.1(a) and RPC 8.4(c) by utilizing retainer forms that falsely stated that an attorney supervised the legal matters and failed to specifically identify the responsible attorney at the Firm.

He stipulated to having further violated RPC 8.4(c) by failing to list the basis or rate of fees in the retainer agreement.

Next, respondent stipulated to having violated RPC 1.8(h)(1) by using the Firm's retainer agreements that improperly had clients waive any right to malpractice claims against the Firm.

He stipulated to having violated RPC 7.1(a)(1) and (a)(4) and RPC 8.4(c) by using the Firm's retainer agreements that (1) falsely stated that clients could waive their right to fee arbitration in New Jersey before a dispute arose; (2) failed to advise clients of their right to pursue fee arbitration in New Jersey; (3) falsely suggested that clients could only pursue claims against the Firm in Florida; and (4) improperly contained deceptive binding arbitration clauses.

In aggravation, the parties stipulated that respondent's misconduct occurred for an extended period, approximately six years, and impacted approximately 147 clients. In mitigation, the parties stipulated that respondent entered into the disciplinary stipulation, saving valuable resources, and had no disciplinary history.

Subsequent to the filing of the ethics complaint, respondent provided the OAE with a compliant retainer agreement, in addition to proof that he had signatory authority on the Firm's New Jersey ATA2 and all New Jersey client funds had been transferred to that account. Respondent further represented that

(1) the Firm would not take on additional New Jersey matters until the instant ethics matter had been resolved, (2) going forward, he would be involved in all New Jersey client matters from inception, and (3) he would supervise the Firm's nonlawyer staff.

Based upon respondent's stipulated violations and the aggravating and mitigating factors, the OAE recommended that he receive a censure or such lesser discipline as we deem appropriate. In support of a censure, the OAE cited disciplinary precedent, which is discussed below.

Following a review of the record, we are satisfied that the facts contained in the stipulation clearly and convincingly support the finding that respondent committed most of the charged misconduct.

First, it is undisputed that respondent was the Firm's only attorney licensed to practice in New Jersey. Accordingly, respondent had a duty to ensure that the Firm complied with the New Jersey RPCs and Court Rules in connection with its representation of New Jersey clients. As he admitted in the stipulation, he failed to do so in numerous ways.

RPC 1.15(d); RPC 5.3(a) and (b); RPC 5.4(c); and RPC 5.5(a)(2)

RPC 5.3 provides, in relevant part, that:

> (a) every lawyer, law firm or organization authorized by the Court Rules to practice law in this jurisdiction shall adopt and maintain reasonable efforts to ensure that the conduct of nonlawyers retained or employed by the lawyer, law firm or organization is compatible with the professional obligations of the lawyer.
>
> (b) a lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer.

Respondent, as the only New Jersey attorney at the Firm, had supervisory authority over the nonlawyer staff working on New Jersey client matters. He stipulated to having wholly failed to supervise the nonlawyer staff at almost every stage of his representation of the Firm's New Jersey clients. Specifically, respondent neither trained the Firm's nonlawyer staff nor knew their qualifications. He failed to train or supervise the nonlawyer staff who conducted client intakes, answered questions posed by clients, and negotiated client debts with creditors. Respondent's complete abdication of his supervisory responsibilities clearly fell below the standard required of a New Jersey attorney. Thus, respondent violated RPC 5.3(a) and (b).

Next, RPC 5.4(c) states that "[a] lawyer shall not permit a person who recommends, employs, or pays the lawyer to render legal services for another to direct or regulate the lawyer's professional judgment in rendering such legal services." As respondent stipulated, he violated RPC 5.4(c) by permitting the

Firm's manager to unilaterally determine if and when he became involved in a client matter, instead of utilizing his own professional judgment.

RPC 5.5(a)(2) further prohibits an attorney from assisting a nonlawyer in the unauthorized practice of law. Respondent allowed the Firm's nonlawyer staff to secure New Jersey clients, initiate and manage New Jersey cases, and conduct settlement discussions related to New Jersey cases – all without his involvement. Those acts constitute the unauthorized practice of law in New Jersey. Respondent, thus, assisted the Firm's nonlawyer staff in the unauthorized practice of law, in violation of RPC 5.5(a)(2).

Last, RPC 1.15(d) provides that "[a] lawyer shall comply with the provisions of R. 1:21-6." As the Firm's only attorney licensed in New Jersey, respondent had a nondelegable duty to ensure that the Firm's recordkeeping practices complied with the New Jersey requirements. Yet, consistent with his hands-off approach, over the course of years, respondent failed to oversee the Firm's recordkeeping concerning New Jersey clients' funds. In his September 11, 2019 reply to the OAE and again in his answer to the instant complaint, respondent stipulated to having violated RPC 1.15(d), as revealed by the continuing deficiencies in the recordkeeping documents produced over an extended period of time. Respondent, thus, violated RPC 1.15(d).

RPC 1.8(h)(1), RPC 7.1, and RPC 7.5

RPC 1.8(h)(1) states that:

> A lawyer shall not make an agreement prospectively limiting the lawyer's liability to a client for malpractices unless the client fails to act in accordance with the lawyer's advice and the lawyer continues to represent the client at the client's request. . . . [T]he lawyer shall not make such an agreement unless permitted by law and the client is independently represented in making the agreement.

As respondent stipulated, and as demonstrated by evidence contained in the record, he violated that Rule by utilizing the Firm's retainer agreements that improperly had clients waive any right to a malpractice claim against the Firm at the inception of the representation. There is no evidence in the record that any clients failed to abide by respondent's advice or had been informed of their right to consult independent counsel prior to entering into the agreement. Again, as the Firm's only attorney licensed in New Jersey, respondent had a duty to ensure that the Firm's retainer agreements complied with the New Jersey requirements. Respondent, thus, violated RPC 1.8(h)(1).

Next, RPC 7.1(a) states, in relevant part, that:

> A lawyer shall not make false or misleading communications about the lawyer, the lawyer's services, or any matter in which the lawyer has or seeks a professional involvement. A communication is false or misleading if it:

> (1) contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading;
>
> (4) relates to legal fees other than . . . a statement of specified hourly rates, provided the statement makes clear that the total charge will vary according to the number of hours devoted to the matter, and in relation to the varying hourly rates charged for the services of different individuals who may be assigned to the matter.

Violations of RPC 7.1(a) typically involve a lawyer affirmatively making misleading communications about the lawyer or the lawyer's services in advertisements, in solicitation letters, or, as in the instant matter, on letterhead.

As evidenced by the record, and as he stipulated, respondent violated RPC 7.1(a)(1) and (4). Specifically, the Firm's various retainer agreements, upon which respondent relied, failed to specify the individual at the Firm charging the standard $300 hourly rate; failed to inform clients of their right to request fee arbitration in New Jersey; improperly had clients waive malpractice claims against the Firm; improperly suggested that all causes of action had to be brought in Florida; and improperly suggested that clients had to bring claims through binding arbitration.

RPC 7.5(b) permits a law firm practicing in more than one jurisdiction to use the same law firm name in New Jersey, provided that the licensed New Jersey attorney is identified in advertisements, letterhead, and other

communication containing the law firm name. As respondent stipulated, and as clearly evidenced in the record, respondent violated RPC 7.5(b) because, from 2018 through 2020, the Firm advertised under Defense Lawyer's, P.A., or Stein Law Group, P.A. in New Jersey and their website failed to identify respondent as the attorney responsible for handling New Jersey client matters. The Firm's letterhead and retainer forms similarly failed to identify respondent as the licensed New Jersey attorney for the Firm. Respondent, thus, violated RPC 7.5(b).

RPC 1.4(a) and RPC 1.5(a) and (b)

RPC 1.4 states, in relevant part:

> (a) A lawyer shall fully inform a prospective client of how, when, and where the client may communicate with the lawyer.
>
> (c) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

As respondent stipulated, he violated RPC 1.4(a). Specifically, respondent failed to provide the Firm's prospective New Jersey clients with his contact information. Indeed, as recently as 2020, the Firm continued to advertise under the name Defense Lawyer's, P.A. in New Jersey and their website failed to identify respondent as the attorney responsible for handling the Firm's New

Jersey client matters. Respondent, thus, violated RPC 1.4(a). RPC 1.4(c) is addressed later in the analysis.

Next, RPC 1.5 states, in relevant part:

> (a) A lawyer's fee shall be reasonable.
>
> (b) When the lawyer has not regularly represented the client, the basis or rate of the fee shall be communicated in writing to the client before or within a reasonable time after commencing the representation.

Respondent violated RPC 1.5(a) by permitting the Firm to charge and collect unauthorized fees in the Settle matter. Specifically, it is undisputed that some of the monthly charges for Settle occurred during periods of inactivity and, thus, constituted unearned, excessive fees. In a recent disciplinary matter before us, an attorney admittedly imposed a prohibited, two-percent surcharge on billed fees for "costs incurred and not otherwise billed." The attorney conceded that, pursuant to ABA Comm. on Ethics and Professional Responsibility, Formal Op. 93-379, (December 6, 1993) (entitled "Billing for Professional Fees, Disbursements and Other Expenses"), such a surcharge is prohibited and constitutes a per se violation of RPC 1.5(a). In the Matter of Steven R. Lehr, DRB 22-019 (August 3, 2022) at 1-2. That matter is pending before the Court. Additionally, as he stipulated, respondent also violated RPC 1.5(b) by using retainer agreements that failed to specify the individual, attorney or non-lawyer

staff, who charged the "Firm's standard hourly rate" of $300. As the Firm's only attorney licensed in New Jersey, respondent had a duty to ensure that the Firm's retainer agreements and billing practices complied with the New Jersey requirements.

RPC 8.1(b)

Respondent also stipulated to having failed to fully reply to the OAE's August 23, 2019 document request and to provide the revised, Croux retainer agreement, as promised in his September 11, 2019 letter. It is well-settled that cooperation short of the full cooperation contemplated by the Rules constitutes a violation of RPC 8.1(b). See, e.g., In re Wolfe, 236 N.J. 450 (2019); In the Matter of Marc Z. Palfy, DRB 15-193 (March 30, 2016) 48 (we viewed the attorney's partial "cooperation as no less disruptive and frustrating than a complete failure to cooperate[,]" noting that "partial cooperation can be more disruptive to a full and fair investigation, as it forces the investigator to proceed in a piecemeal and disjointed fashion"), so ordered, 225 N.J. 611 (2016). Respondent's partial compliance, here, certainly is not the "full, candid, and complete disclosure" contemplated by the Rules and case law. See In re Gavel, 22 N.J. 248, 263 (1956). Thus, it is clear that respondent failed to fully comply with the OAE's reasonable document requests, in violation of RPC 8.1(b).

RPC 1.4(c), RPC 1.15(c), and RPC 8.4(c)

Regarding RPC 1.4(c), the OAE argued that respondent violated that Rule by failing to explain the Firm's fees and charges to clients, prohibiting them from making informed decisions about the representation, and by failing to comply with clients' requests for an invoice. Respondent's failures to explain the Firm's legal fees to its New Jersey clients is fully, and more appropriately, addressed by his RPC 1.5(a) and (b) violations. Next, there is no proof in the record that any client specifically requested an invoice or information from respondent, to which he subsequently failed to reply. Therefore, there is insufficient evidence in the record to find, by clear and convincing evidence, that respondent violated RPC 1.4(c) by failing to communicate with the clients. Thus, we determine to dismiss that charged violation.

RPC 1.15(c), states that:

> When in the course of representation a lawyer is in possession of property in which both the lawyer and another claim interest, the property shall be kept separate by the lawyer until there is an accounting and severance of their interests. If a dispute arises concerning their respective interests, the portion in dispute shall be kept separate by the lawyer until the dispute is resolved.

The OAE argued that respondent violated that Rule by failing to provide clients with an accounting of the Firm's legal fees prior to taking fees from retainer funds. It is undisputed that respondent abdicated the handling of New Jersey clients' funds and recordkeeping to the Firm. That misconduct is appropriately addressed by respondent's violations of RPC 1.15(d) and RPC 5.3(a) and (b). Here, nothing in the record suggests that the Firm, or respondent by extension, negligently misappropriated client funds or failed to safeguard funds. Therefore, we determine to dismiss the charge that respondent violated RPC 1.15(c).

There is also insufficient evidence to prove, by clear and convincing evidence, that respondent violated RPC 8.4(c). The OAE argued that respondent violated that Rule based upon the misrepresentations and omissions from in the Firm's retainer forms. A violation of RPC 8.4(c) requires intent. See, e.g., In the Matter of Ty Hyderally, DRB 11-016 (July 12, 2011). Although the Firm's retainer forms left much to be desired, respondent admittedly failed to review those forms and, many times, did not even speak to the Firm's New Jersey clients. Based upon the record before us, there is no evidence that respondent possessed the requisite intent to deceive and, therefore, we determine to dismiss that charged violation.

In sum, we find that respondent violated RPC 1.4(a); RPC 1.5(a) and (b); RPC 1.8(h)(1); RPC 1.15(d); RPC 5.3(a) and (b); RPC 5.4(c); RPC 5.5(a)(2); RPC 7.1(a)(1) and (4); RPC 7.5(b); and RPC 8.1(b). We further determine to dismiss the charges that respondent violated RPC 1.4(c), RPC 1.15(c), and RPC 8.4(c). The sole issue left for our determination is the appropriate quantum of discipline for respondent's misconduct.

Based on New Jersey disciplinary precedent, respondent's most egregious misconduct was his prolonged assistance of nonlawyers in the practice of law. A New Jersey attorney who assists nonlawyers in the practice of law, fails to supervise nonlawyers, or allows a person who pays the attorney to direct their professional judgment, typically receives discipline ranging from a reprimand to a term of suspension, depending on the severity of the conduct and the presence of other violations or aggravating factors. See, e.g., In re Kingett, 247 N.J. 241 (2021) (reprimand for attorney who violated RPC 5.3(a), RPC 5.4(c), RPC 1.4(c), and RPC 1.7(a) (engaging in a conflict of interest); the attorney represented approximately 200 clients, who were referred to him by a corporation formed to provide estate planning; that corporation gathered information from clients, which it provided to respondent when the clients were referred; the clients signed a retainer agreement with a limited scope of representation; the attorney drafted pleadings, but admittedly had limited

discussions with the clients; the attorney did not witness the clients' execution of the prepared documents; no prior discipline); In re Bevacqua, 174 N.J. 296 (2002) (reprimand for attorney who assigned an unlicensed lawyer to prepare a client for a deposition and to appear on the client's behalf; the attorney also engaged in gross neglect, a pattern of neglect, and lack of diligence; mitigating factors included the attorney's lack of disciplinary history, inexperience, and, notably, the misconduct resulting from poor judgment, rather than venality); In re Gottesman, 126 N.J. 376 (1991) (reprimand imposed on attorney who aided in the unauthorized practice of law by allowing a paralegal to advise clients on the merits of claims, permitting the paralegal to exercise sole discretion in formulating settlement offers, and sharing legal fees with the paralegal (RPC 5.4(a)); In re Aponte, 215 N.J. 298 (2013) (censure imposed on an attorney for fee sharing with a nonlawyer, forming a partnership with a nonlawyer (RPC 5.4(b)), and assisting in the unauthorized practice of law; the attorney entered into a business agreement with nonlawyers to obtain their assistance in handling bankruptcy and mortgage modifications for seventy-seven clients; the attorney's assistant brought in clients and the nonlawyers, who the attorney paid as subcontractors, collected all data and paperwork from clients, communicated with clients and banks, and drafted the bankruptcy petitions; the attorney handled the matters to completion after the drafting of the petitions; the attorney

also violated RPC 1.15(d) by failing to maintain a trust account for two years; RPC 1.1(a) (engaging in gross neglect); RPC 1.1(b) (engaging in a pattern of gross neglect); and RPC 1.3 (engaging in lack of diligence)); In re Munier, 246 N.J. 459 (2021) (three-month suspension imposed on an attorney for failing to supervise nonlawyer staff; fee sharing with nonlawyer; forming a partnership with a nonlawyer; and assisting in the unauthorized practice of law; the attorney also violated RPC 1.1(a); RPC 1.3; RPC 1.4(b) and (c) (failing to communicate); RPC 1.5(a); RPC 1.16(d) (failing to protect a client's interests upon termination of representation); RPC 8.4(b) (committing a criminal act that reflects adversely on a lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects); and RPC 8.4(c); the attorney shared an office with a loan modification company, the CEO of which was not licensed to practice in New Jersey; the loan modification advertised for business using the attorney's name, without his input; the attorney had clients complete forms, but then transferred the case to the loan modification company for handling; thereafter, the attorney only got involved in the matters if the clients needed a loan modification agreement to be reviewed to determine if it was fair and affordable or to defend clients in foreclosure matters; the company submitted information to lenders on behalf of clients and the attorney failed to supervise the nonlawyers working for the company; we noted that a censure was the baseline quantum of discipline for the

attorney's misconduct, but determined to enhance discipline based upon the attorney's prior discipline for similar misconduct); In re Frank, 232 N.J. 325 (2018) (one-year suspension imposed, in a default matter, on an attorney who formed a partnership with a nonlawyer and assisted the nonlawyer in the unauthorized practice of law; the nonlawyer performed functions of an attorney in bankruptcy and loan modifications; specifically, the nonlawyer interviewed clients; prepared and signed letters and pleadings in the attorney's name; explained legal issues to clients; and negotiated with lenders; the attorney also violated RPC 1.1(a); RPC 1.5(b); RPC 1.15(d); RPC 7.1(a)(2); RPC 7.5(a) and (c); RPC 8.1(b); and RPC 8.4(a); discipline was enhanced, in part, based upon the attorney's serious failure to cooperate with the OAE).

Based on the above precedent, respondent's prolonged assistance of nonlawyers in the practice of law, standing alone, warrants the baseline discipline of a reprimand. Respondent, however, committed additional, diverse misconduct.

Recordkeeping irregularities ordinarily are met with an admonition where, as here, they have not caused a negligent misappropriation of clients' funds. See, e.g., In the Matter of Andrew M. Newman, DRB 18-153 (July 23, 2018) (the attorney failed to maintain trust or business account cash receipts and disbursements journals, proper monthly trust account three-way reconciliations,

and proper trust and business account check images); In the Matter of Eric Salzman, DRB 15-064 (May 27, 2015) (after an overdraft in the attorney trust account, an OAE demand audit revealed that the attorney (1) did not maintain trust or business receipts or disbursements journals, or client ledger cards; (2) made disbursements from the trust account against uncollected funds; (3) withdrew cash from the trust account; (4) did not properly designate the trust account; and (5) did not maintain a business account, in violation of RPC 1.15(d) and R. 1:21-6).

Respondent also engaged in the use of misleading forms and advertisements, misconduct which ordinarily results in an admonition. See, e.g., In the Matter of Raymond A. Oliver, DRB 09-368 (May 24, 2010) (attorney used letterhead that identified three attorneys as "of counsel," despite the absence of a professional relationship with them, a violation of RPC 7.1(a) and RPC 7.5(a); attorney also violated RPC 8.4(d) (engaging in conduct prejudicial to the administration of justice) because two of those attorneys were sitting judges, which easily could have created a perception that he had improper influence with the judiciary); In the Matter of Paul L. Abramo, DRB 08-209 (October 20, 2008) (attorney used firm letterhead that contained the name of an attorney after he was no longer associated with the firm, violations of RPC 7.5(c) (improper law firm name) and N.J. Advisory Committee on Professional Ethics Opinion

215, 94 N.J.L.J. 600 (1971)); In the Matter of Carlos A. Rendo, DRB 08-040 (May 19, 2008) (attorney used letterhead that failed to identify that a lawyer was admitted to practice law only in New York; a violation of RPC 7.1(a) and RPC 7.5(a) (improper law firm name)).

Cases involving violations of RPC 1.8(h) are exceedingly rare. In In re Regojo, 180 N.J. 523 (2004), the Court imposed a reprimand on an attorney who admitted that he had failed to advise his client to seek independent counsel before negotiating a potential malpractice claim. In the Matter of Fernando Regojo, DRB 03-457 (April 6, 2004) at 14. The attorney also violated RPC 1.1(a), RPC 1.3, and RPC 1.4(b). Id. at 13.

Regarding RPC 1.4(a), the crux of the misconduct is respondent's failure to communicate with his New Jersey clients. Typically, attorneys who fail to adequately communicate with their clients are admonished. See, e.g., In the Matter of Kourtney Anna Borchers, DRB 21-237 (February 22, 2022) (the attorney violated RPC 1.4(b) by repeatedly failing, for weeks, to reply to a client's reasonable requests for information; the attorney also violated RPC 1.3 (lack of diligence); attorney had a prior admonition); In the Matter of Cynthia A. Matheke, DRB 13-353 (July 17, 2014) (the attorney violated RPC 1.4(b) and (c) by failing to advise her client about "virtually every important event" in the

client's malpractice case between 2006 and 2010, including the dismissal of her complaint).

Discipline for fee overreaching ranges from a reprimand to disbarment. See, e.g., In re Read, 170 N.J. 319 (2002) (reprimand imposed on an attorney who charged grossly excessive fees in two estate matters and presented inflated records to justify them; strong mitigating factors considered); In re Hinnant, 121 N.J. 395 (reprimand imposed on an attorney who attempted to collect a $21,000 fee in a real estate transaction, including a commission on the purchase price; conflict of interest also found); In re Verni, 172 N.J. 315 (2002) (three-month suspension imposed on an attorney who charged excessive fees in three matters and knowingly making false statements to disciplinary authorities; the attorney made a divorce case appear more complicated than it was in order to justify a higher fee and charged a fee for the preparation of a document he never prepared; the fee arbitration committee reduced his $8,700 fee by almost half for padding his time); In re Thompson, 135 N.J. 125 (1994) (three-month suspension imposed on an attorney who charged $2,250 to file two identical motions necessitated by the attorney's own neglect and to file a pre-trial motion, which she never prepared; misrepresentations considered in aggravation, and illness considered in mitigation); In re Wolk, 82 N.J. 326 (1980) (disbarment for gross and intentional exaggeration of services rendered on behalf of an eight-

year-old paralyzed boy and for enticing a recently-widowed client to invest in a building owned by the attorney, without properly safeguarding her rights).

Conduct involving the failure to memorialize the basis or rate of a fee typically results in an admonition, even if accompanied by other, non-serious ethics offenses. See, e.g., In the Matter of Peter M. Halden, DRB 19-382 (February 24, 2020) (attorney failed to set forth in writing the basis or rate of the legal fee, and failed to abide by the client's decisions concerning the scope of the representation; no prior discipline); In the Matter of Kenyatta K. Stewart, DRB 19-228 (October 22, 2019) (attorney failed to set forth in writing the basis or rate of the legal fee, and engaged in a concurrent conflict of interest; no prior discipline); In the Matter of Alan Monte Kamel, DRB 19-086 (May 30, 2019) (attorney failed to provide the client with a writing setting forth the basis or rate of his fee in a collection action, failed to communicate with the client, and failed to communicate the method by which a contingent fee would be determined; no prior discipline).

Admonitions typically are imposed for failure to cooperate with disciplinary authorities, if the attorney has a limited or no ethics history. See, e.g., In the Matter of Giovanni DePierro, DRB 21-190 (January 24, 2022) (attorney failed to respond to letters from the investigator in the underlying ethics investigation in violation of RPC 8.1(b); attorney also violated RPC

1.4(b), RPC 1.5(c) (failing to set forth in writing the basis or rate of the attorney's fee in a contingent fee case – two instances), and RPC 1.16(d)); In the Matter of Michael C. Dawson, DRB 15-242 (October 20, 2015) (attorney failed to reply to repeated requests for information from the district ethics committee investigator regarding his representation of a client in three criminal defense matters, in violation of RPC 8.1(b)).

Most egregiously, respondent aided others – nonlawyers and a lawyer not licensed in New Jersey – in the unauthorized practice of law. He also wholly abdicated his nondelegable recordkeeping and his supervisory responsibilities. His misconduct is most similar to that of the attorneys in Kingett and Gottesman, who received reprimands. Just like those attorneys, respondent permitted nonlawyers to handle his client matters, without his involvement. Notably, Kingett represented approximately 200 clients and respondent represented approximately 147 clients. As stated above, for that misconduct alone, a reprimand is warranted. When considering his additional, wide-ranging ethics infractions in the aggregate, discipline of a censure or three-month suspension would be appropriate.

In crafting the appropriate discipline, however, we also consider aggravating and mitigating factors.

In aggravation, respondent's misconduct occurred over an extended period and involved a substantial number of clients. In further aggravation, despite the CUPL's early involvement in the matter, respondent failed to promptly correct the bank account and advertisement issues, and did so only after extensive efforts by the OAE. Specifically, Mohan copied respondent on seven of her nine requests to the Firm seeking proof of compliance with the New Jersey recordkeeping requirements. Despite having been on notice of the deficiencies, as early as May 22, 2017, respondent failed, as the only licensed New Jersey attorney at the Firm, to maintain the required New Jersey accounts on behalf of the Firm, until September 2019. Moreover, based upon his private practice and related Wells Fargo financial accounts in New Jersey, respondent should have been familiar with the New Jersey requirements.

In mitigation, respondent has no disciplinary history in almost twenty years at the bar. In further mitigation, subsequent to the filing of the ethics complaint, respondent provided the OAE with a compliant retainer agreement, in addition to proof that he had signatory authority on the Firm's financial accounts in New Jersey and that all New Jersey client funds had been transferred to that account. In further mitigation, respondent has stipulated to his misconduct.

On balance, we determine that the aggravating and mitigating factors are in equipoise and that a censure is sufficient discipline to protect the public and preserve confidence in the bar.

Chair Gallipoli voted to recommend a three-month suspension.

Member Menaker 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: **/s/ Timothy M. Ellis**
Timothy M. Ellis
Acting Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Wardell Huff
Docket No. DRB 22-106

Argued: October 20, 2022

Decided: December 7, 2022

Disposition: Censure

Members	Censure	Three-Month Suspension	Absent
Gallipoli		X	
Boyer	X		
Campelo	X		
Hoberman	X		
Joseph	X		
Menaker			X
Petrou	X		
Rivera	X		
Total:	6	1	1

/s/ Timothy M. Ellis
Timothy M. Ellis
Acting Chief Counsel