

SUPREME COURT OF NEW JERSEY  
Disciplinary Review Board  
Docket No. DRB 13-195  
District Docket Nos. XIV-2012-  
0216E, XIV-2012-0232E, and XIV-  
2012-0236E

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IN THE MATTER OF :  
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WILLIAM E. GAHWYLER, JR. :  
:   
AN ATTORNEY AT LAW :  
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Decision

Decided: December 17, 2013

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

This matter was before us on a certified record from the Office of Attorney Ethics (OAE), pursuant to R. 1:20-4(f). The complaint charged respondent with violating RPC 1.15(a) (failure to safeguard client property), RPC 1.15(d) (recordkeeping violations), and RPC 8.1(b) (failure to cooperate with disciplinary authorities).

We determine to impose a censure.

Respondent was admitted to the New Jersey bar in 1990. He was admitted to the New York and Florida bars in 1991 and 1992,

respectively. In 2011, he was censured for misrepresentations on closing documents, conflict of interest, and failure to set forth the basis or rate of his fee, in writing. In re Gahwyler, 208 N.J. 353 (2011).

In 2013, respondent was suspended for one year for taking an excessive fee, dishonesty, and conflict of interest in a real estate transaction. In that case, he represented the buyer and seller and prepared a false RESPA in which he certified that the seller had received over \$200,000 in sale proceeds, when she had received only \$35,000. He also failed to disclose that a party not listed on the statement had received over \$120,000 of the seller's funds. In re Gahwyler, 212 N.J. 556 (2013). He remains suspended to date.

Service of process was proper. On March 21, 2013, the OAE forwarded a copy of the complaint, by certified and regular mail, to respondent's last known office address, P.O. Box 533, Midland Park, New Jersey 07432 and to his home address. The certified mail receipt, signed by respondent, was returned, indicating delivery to respondent's office address on April 16, 2013. The regular mail addressed to respondent's office was not returned. The certified mail to respondent's home address was

returned marked "Unclaimed." The regular mail to that address was not returned.

On April 17, 2013, the OAE sent a second letter to respondent, advising him that, unless he filed an answer to the complaint within five days, the allegations would be deemed admitted and the record certified to us for the imposition of discipline. The letter also served to amend the complaint to charge respondent with violating RPC 8.1(b). The letter was sent to respondent's office and home addresses by certified and regular mail. The certified mail to both addresses was returned "Unclaimed." The regular mail envelopes were not returned.

As of the date of the OAE's certification, June 4, 2013, respondent had not filed an answer to the complaint.

In April 2012, the OAE received three overdraft notices for an account that respondent maintained, captioned "Country Club Real Estate Trust William E. Gahwyler Trustee." As a result of the overdraft notices, the OAE conducted a review of respondent's attorney books and records, which revealed the following recordkeeping violations:

- (a) Respondent failed to maintain a trust account receipts journal in violation of R. 1:21-6(c);

- (b) Respondent failed to maintain a trust account disbursements journal in violation of R. 1:21-6(c);
- (c) There were unidentified funds in Respondent's trust account in violation of RPC 1:15(a);
- (d) Respondent failed to maintain trust account three-way reconciliations to include a schedule of client trust ledger balances, book balances and bank statement balances in violation of R. 1:21-6(d);
- (e) There were incomplete or missing client ledger cards in violation of R. 1:21-6(c)(1)(B);
- (f) Respondent failed to place all attorney's fees in his attorney business account in violation of R. 1:21-6(a)(2);
- (g) Certain client ledger cards contained negative balances in violation of R. 1:21-6(d); and
- (h) Respondent's trust account contained old client balances (over one year) in violation of R. 1:21-6(d).

[C¶2.]<sup>1</sup>

By letter dated July 18, 2012, the OAE informed respondent of the deficiencies in his trust account and requested that he provide additional documentation, within forty-five days, including monthly reconciliations of all funds in his trust

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<sup>1</sup> C refers to the complaint.

account for June 2012. Despite numerous subsequent requests for respondent's trust account reconciliations, as of the date of the complaint, March 20, 2013, respondent had not provided the OAE with his monthly trust account reconciliations, client ledger cards, and receipt and disbursements journals.<sup>2</sup>

The complaint charged respondent with violating RPC 1.15(a), RPC 1.15(d), and RPC 8.1(b).

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 committed recordkeeping violations (RPC 1.15(d)) that resulted in three overdraft notices, thereby sparking the OAE's audit of his attorney records. The complaint does not allege, however, that client funds were invaded. Although the complaint alleged that respondent violated RPC 1.15(a) by maintaining unidentified funds in his trust account, we deem that infraction to be a recordkeeping violation under RPC 1.15(d). Respondent also failed to cooperate with the OAE by

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<sup>2</sup> Although the record contains a letter from respondent forwarding some of the requested documents, the OAE did not receive the promised additional documents.

ignoring its requests for additional documentation, a violation of RPC 8.1(b).

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 Steve Hallett, DRB 12-140 (July 25, 2012) (for five years, the attorney maintained about \$9,500 in his trust account because he could not identify the owners; after the attorney became incapacitated by a medical condition, the funds were depleted by automatic debits and bill payments that he had not authorized, resulting in the account being overdrawn; although the attorney had received two reprimands, they stemmed from unrelated conduct; mitigating factors included the attorney's previous regular monitoring of the account to ensure that the funds remained intact, his efforts to replenish the missing funds by making monthly installment payments, and his representation that, once the funds were fully replenished, he would apply for permission to deposit them in the Superior Court Trust Fund); 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 John K. Park, DRB 10-333 (February 1, 2011) (after representing clients in the

purchase of real estate, the attorney inadvertently deposited the funds in his New York trust account, rather than his New Jersey trust account maintained at the same bank, and failed to maintain trust account records in connection with the transaction); In the Matter of Robert M. Mayerovic, DRB 09-060 (June 9, 2009) (a random audit of the attorney's trust account revealed several recordkeeping deficiencies that had also been identified in a 1990 audit); 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); and 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 addition to failing to provide the additional requested documentation to the OAE, respondent did not file an answer to the complaint, allowing this matter to proceed as a default. In a default matter, the otherwise appropriate discipline is enhanced to reflect an attorney's failure to cooperate with disciplinary authorities. In re Kivler, 193 N.J. 332, 342 (2008). Therefore, the otherwise appropriate discipline for

recordkeeping irregularities – an admonition – is elevated to a reprimand.

In further aggravation, however, we considered that respondent has previously been disciplined on two occasions: a 2012 censure and a 2013 one-year suspension. We, therefore, again elevate the measure of discipline and determine to impose a censure.

Member Gallipoli did not participate. Members Hoberman and Singer abstained.

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:   
Isabel Frank  
Acting Chief Counsel



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SUPREME COURT OF NEW JERSEY  
DISCIPLINARY REVIEW BOARD  
VOTING RECORD

In the Matter of William E. Gahwyler, Jr.  
Docket No. DRB 13-195

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Decided: December 17, 2013

Disposition: Censure

<i>Members</i>	Disbar	Suspension	Censure	Dismiss	Abstained	Did not participate
Frost			X			
Baugh			X			
Clark			X			
Doremus			X			
Gallipoli						X
Hoberman					X	
Singer					X	
Yamner			X			
Zmirich			X			
Total:			6		2	1



Isabel Frank  
Acting Chief Counsel