SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 12-375
District Docket Nos. XIV-2010-0612E,
XIV-2010-0666E, and XIV-2011-0463E

IN THE MATTER OF	:
NEIL L. GROSS	:
AN ATTORNEY AT LAW	:

Decision

Decided: April 12, 2013

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 five-count amended complaint charged respondent with having violated RPC 1.3 (lack of diligence), RPC 1.15(b) (failure to promptly deliver funds or property to a client or third person), RPC 3.3(a) (knowingly making a false statement of material fact to a tribunal – the New Jersey Supreme Court), RPC 5.5(a) (practicing law while ineligible), RPC 8.1(a) (knowingly making a false statement of material fact to a disciplinary authority - the New Jersey Supreme Court), RPC 8.1(b) (failure to reply to a lawful demand for information from a disciplinary

authority), and RPC 8.4(c) (conduct involving dishonest, fraud, deceit, or misrepresentation).

For the reasons expressed below, we determine that a six-month suspension is warranted.

Respondent was admitted to the New Jersey bar in 1994. At the relevant time, he maintained a law office in Flanders, New Jersey.

Respondent was temporarily suspended on February 28, 2011 for failure to cooperate with an ethics investigation. In re Gross, 205 N.J. 82 (2011). He was reinstated on March 30, 2011. In re Gross, 205 N.J. 233 (2011). He was, again, temporarily suspended on October 23, 2012 for failure to cooperate with an ethics investigation. In re Gross, 212 N.J. 328 (2012). He remains suspended.

In 2011, respondent was censured for misconduct in three client matters. He was found guilty of gross neglect, lack of diligence, failure to communicate with the client, failure to safeguard client property, and failure to cooperate with disciplinary authorities. There, he failed to keep copies of closing documents, failed to timely and correctly record a deed, failed to pursue a real estate transaction, and failed to safeguard a check. The matter proceeded by way of default. In re Gross ____ N.J. ____ (2011).

In 2012, in another default, respondent was again censured for gross neglect of a real estate matter and failure to cooperate with disciplinary authorities. Following a real estate closing, he did not record the deed for almost ten months. In re Gross, 210 N.J. 115 (2012).

Respondent has also been ineligible to practice law for failure to pay the annual assessment to the New Jersey Lawyers' Fund for Client Protection (the Fund) from September 25, 1995 to December 17, 1997 and from September 27, 2010 to September 14, 2012.

Service of process was proper in this matter. On December 1, 2011, the OAE sent copies of the complaint bearing the 2010 district docket numbers, by regular and certified mail, to respondent's last known office address, 227 Route 206, Building 1, Northwest Professional Center, Flanders, New Jersey 07836. The certified mail was returned as unclaimed. The regular mail was not returned.

When a third grievance was filed against respondent, the OAE amended the complaint to include it. On August 28, 2012, the OAE sent copies of the amended complaint, by regular and certified mail, to the same address. The certified mail was returned unclaimed. The regular mail was not returned.

As of the date of the certification of the record, October 26, 2012, respondent had not filed an answer to the amended ethics complaint.

COUNT ONE

Respondent represented the buyer, Patricia McGuinnes, in an April 18, 2010 purchase of property in Stillwater Township, New Jersey. Joseph DeLucia was the seller. From the closing proceeds, respondent retained $2,130 to pay David Gommoll for engineering work he had performed and $14,327 to pay Thomas Van Dyke for work "in relation to the property." Around the time of the closing, both individuals forwarded paperwork to respondent showing that they had performed work and that their payments were due. On May 26, 2010, they both submitted invoices for their respective services.

Respondent initially told Gommoll and Van Dyke that he had issued checks for their services. However, neither one of them received their payments. According to the complaint, respondent's representations were false. Thereafter, respondent did not reply to Gommoll's and Van Dyke's numerous attempts to contact him. After they filed grievances against respondent, a year after the closing, respondent paid them for their services.

The complaint charged respondent with having violated RPC 1.3, RPC 1.15(b), and RPC 8.4(c).

COUNT TWO

By order of the New Jersey Supreme Court, entered on September 27, 2010, respondent was declared ineligible to practice law for failure to pay his annual attorney assessment to the Fund. During the course of the OAE's investigation of the Gommall and Van Dyke grievances, on March 2, 2011, respondent telephoned the OAE and admitted that he had continued to practice law. The OAE's review of respondent's trust account bank statements confirmed that he had continued to represent clients, even though he was still ineligible as of the date of the amended ethics complaint, August 23, 2012.

The complaint charged respondent with having violated RPC 5.5(a).

COUNT THREE

On December 3 and December 21, 2010, respectively, the OAE mailed copies of Gommoll's and Van Dyke's grievances, by regular and certified mail, to respondent's Flanders, New Jersey, office address. Each letter sought a reply to the grievance within ten days. Both certified mail envelopes were returned unclaimed. The

regular mail envelopes were not returned. Respondent did not submit replies to the grievances.

On December 29, 2010, by regular and certified mail, the OAE sent separate copies of the Gommoll and Van Dyke grievances to respondent's home address, 17 Madison Ave, Apt. 44, Madison, New Jersey 07940. The accompanying letters requested that respondent reply to the grievances within ten days. On January 25, 2011, the certified mail was returned as unclaimed. The complaint is silent about the regular mail. Respondent did not reply to either request.

The OAE's January 28, 2011 voicemail message requesting that respondent provide the OAE with the status of his reply was unavailing. Because the OAE's numerous attempts to contact respondent proved fruitless, on February 4, 2011, the OAE sought his temporary suspension. The OAE sent copies of the petition, by regular and certified mail, to respondent's office and home addresses. On February 28, 2011, the Court temporarily suspended respondent (respondent's first temporary suspension).

On March 2, 2011, respondent notified the OAE that he had not received any of the voicemail messages or letters sent to his office or home. He stated that his office had moved from Building 2 to Building 1, but that he had not informed the Court of the change. The OAE advised respondent that he had to

reply to the grievances and petition the Court to have his temporary suspension lifted, before his accounts would be "unfrozen." Respondent's trust account was frozen as a result of his temporary suspension. The OAE discovered that, on May 1, 2011, respondent had a $444,573.73 balance in his trust account.

On March 15, 2011, respondent faxed to the OAE his replies to the grievances. He petitioned the Court to have the order of temporary suspension lifted. On March 30, 2011, the Court granted the petition.

Because respondent failed to reply to the OAE's numerous requests for information and because he failed to pay Gommoll and Van Dyke until after they filed grievances against him, the OAE scheduled a demand audit of respondent's books and records to determine whether he was promptly disbursing trust funds.

The OAE scheduled the audit for April 25, 2011, at respondent's office.[1] When the OAE officials appeared at respondent's law office at Building 1, his door was locked. Respondent did not respond to the OAE's efforts to gain entrance to his office.

By letter dated April 27, 2011, the OAE scheduled another demand audit, on May 10, 2011, at the OAE's offices. The letter

[1] The OAE's scheduling letter was sent by regular and certified mail to respondent's office address at Building 1.

was sent to the Building 1 address by regular and certified mail. Respondent did not appear for the audit.

As of the date of the complaint, August 23, 2012, respondent had failed to explain to the OAE why he had not attended either scheduled audit. Because he failed to cooperate with the OAE, that office was unable to audit respondent's books and records and was, therefore, unable to determine whether he had engaged in "other and more serious [ethics] violations."

The complaint charged respondent with having violated RPC 8.1(b).

COUNT FOUR

As noted above, respondent had been declared ineligible to practice law as of September 27, 2010. On March 24, 2011, he petitioned the Court to have his February 28, 2011 temporary suspension lifted. In his affidavit in support of the petition, he swore that he had sent a check to the Fund to "reinstate [his] eligibility to the practice of law." The Fund had no record of the payment, however. Its records listed respondent as ineligible on June 30, 2011.

Therefore, in a letter dated July 5, 2011, the Deputy Clerk of the Court advised respondent to take immediate steps to cure his ineligibility and informed him that practicing law while

ineligible could subject him to discipline. As of the date of the ethics complaint, respondent had not paid the Fund and remained ineligible to practice law.

On May 25, 2011, shortly after his Valley National Bank accounts were "unfrozen," respondent closed his attorney trust account there and moved $594,637.90 to his PNC Bank attorney trust account. From its examination of respondent's June 7 through December 31, 2011 bank statements, the OAE determined, that, despite the Court's warning that he was still ineligible to practice law, he continued to make numerous deposits and withdrawals from the account that exceeded $100,000.

This count charged respondent with having violated RPC 5.5(a), RPC 3.3(a), and RPC 8.1(a).

COUNT FIVE

Count five charged respondent with having violated RPC 8.1(b) for failing to appear at a January 30, 2012 demand audit scheduled to take place at the OAE's offices. According to the complaint, it was "the third scheduled demand audit within the last nine months for which respondent . . . failed to appear."

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).

Respondent has a history of failing to cooperate with ethics authorities and has been temporarily suspended twice for such conduct. Here, not only did he fail to appear at three scheduled demand audits, but he also failed to reply to requests for information about the grievances until he was temporarily suspended. He also failed to file an answer to this ethics complaint. We note that this is respondent's third default matter. As mentioned in the complaint, respondent's failure to cooperate has prevented the OAE from determining whether he is guilty of more serious conduct. Respondent is, therefore, guilty of having violated RPC 8.1(b) (counts three and five).

Count one charged respondent with having violated RPC 1.3, RPC 1.5(b), and RPC 8.4(c). Typically, RPC 1.3 is reserved for conduct relating to the representation of a client. Here, respondent failed to turn over funds to third persons who had performed services in connection with the sale of property to his client. Thus, RPC 1.15(b), failure to promptly deliver funds to third persons, rather than RPC 1.3, is the appropriate rule violation.

Respondent is also guilty of falsely informing Gommoll and Van Dyke that he had issued checks for their services, thereby

violating RPC 8.4(c). Respondent did not issue the checks until after Gommoll and Van Dyke filed grievances against him, almost one year after the closing.

As to count two, the allegations support a finding that respondent practiced law while ineligible, a violation of RPC 5.5(a).

Count four charged respondent with having violated RPC 3.3(a), RPC 5.5(a), and RPC 8.1(a). Specifically, after being declared ineligible to practice law, he filed an affidavit with the Court, stating that he had sent a check to the Fund to cure his ineligibility. Notwithstanding his sworn statement to the Court, dated March 24, 2011, respondent remained ineligible until September 14, 2012, and continued to practice law. He did not pay his annual assessment to the Fund until three weeks after the ethics complaint was filed, on August 23, 2012.

The allegations, thus, establish that respondent made a false statement of material fact to a tribunal (RPC 3.3(a) and RPC 8.1(b). In addition, even after having been warned by the Court, on July 5, 2011, that the Fund had not received his payment, respondent's trust account showed activity from June 7, through December 31, 2011. Thus, the allegations support a finding that respondent is guilty of having violated RPC 5.5(a).

In sum, respondent violated RPC 1.15(b), RPC 3.3(a), RPC 5.5(a), RPC 8.1(a) and (b), and RPC 8.4(c).

As seen below, standing alone, practicing law while ineligible, failing to turn over funds to third persons, or even misrepresentations to third persons do not warrant significant discipline. However, respondent's conduct here is aggravated by the number of violations present and the fact that this is his third default, underscoring that he continues to ignore ethics authorities.

The discipline imposed in matters involving lack of candor to a tribunal has ranged from an admonition to a long-term suspension, depending on the severity of the conduct and on other factors present. See, e.g., In the Matter of Lawrence J. McGivney, DRB 01-060 (March 18, 2002) (admonition for attorney who improperly signed the name of his superior, an Assistant Prosecutor, to an affidavit in support of an emergent wiretap application moments before its review by the court, knowing that the court might be misled by his action; in mitigation, we considered that the superior had authorized the application, that the attorney was motivated by the pressure of the moment, and that he brought his impropriety to the court's attention one day after it occurred); In the Matter of Robin K. Lord, DRB 01-250 (September 24, 2001) (admonition for attorney who failed to reveal her client's real

name to a municipal court judge when her client appeared in court using an alias; unaware of the client's significant history of motor vehicle infractions, the court imposed a lesser sentence; in mitigation, the attorney disclosed her client's real name to the municipal court the day after the court appearance, whereupon the sentence was vacated); In re Whitmore, 117 N.J. 472 (1990) (reprimand imposed on a municipal prosecutor who failed to disclose to the court that a police officer whose testimony was critical to the prosecution of a DWI charge had intentionally left the courtroom before the case was called, resulting in the dismissal of the charge); In re Mazeau, 122 N.J. 244 (1991) (attorney reprimanded for failure to disclose to a court his representation of a client in a prior lawsuit, when that representation would have been a factor in the court's ruling on the attorney's motion to file a late notice of tort claim); In re Hummel, 204 N.J. 32 (2010) (censure in a default matter for misrepresentation in a motion filed with the court; gross neglect, lack of diligence, and failure to communicate with the client; the attorney had no disciplinary record); In re Stuart, 192 N.J. 441 (2007) (three-month suspension for assistant district attorney in New York who, during the prosecution of a homicide case, misrepresented to the court that he did not know the whereabouts of a witness; in fact, the attorney had made contact with the witness four days earlier; compelling

mitigation justified only a three-month suspension); In re Hasbrouck, 186 N.J. 72 (2006) (attorney suspended for three months for, among other serious improprieties, failing to disclose to a judge his difficulties in following the judge's exact instructions about the deposit of a $600,000 check in an escrow account for the benefit of the parties to a matrimonial action; instead of opening an escrow account, the attorney placed the check under his desk blotter, where it remained for eight months); In re Paul, 167 N.J. 6 (2001) (three-month suspension for attorney who made misrepresentations to his adversary in a deposition and in several certifications to a court); In re D'Arienzo, 157 N.J. 32 (1999) (three-month suspension for attorney who made multiple misrepresentations to a judge about his tardiness for court appearances or failure to appear; mitigating factors considered); In re Chasan, 154 N.J. 8 (1998) (three-month suspension for attorney who distributed a fee to himself after representing that he would maintain the fee in his trust account pending a dispute with another attorney over the division of the fee, and then led the court to believe that he was retaining the fee in his trust account; the attorney also misled his adversary, failed to retain fees in a separate account, and violated recordkeeping requirements); In re Kernan, 118 N.J. 361 (1990) (three-month suspension for attorney who, in his own divorce

matter, submitted to the court a case information statement with a list of his assets and one day before the hearing transferred to his mother one of those assets, an unimproved 11.5 acre lot, for no consideration; the attorney's intent was to exclude the asset from marital property subject to equitable distribution; the attorney did not disclose the conveyance at the settlement conference held immediately prior to the court hearing and did so only when directly questioned by the court; the attorney also failed to amend the certification of his assets to disclose the transfer of the lot ownership; prior private reprimand); In re Forrest, 158 N.J. 428 (1999) (attorney who failed to disclose the death of his client to the court, to his adversary, and to an arbitrator was suspended for six months; the attorney's motive was to obtain a personal injury settlement); In re Telson, 138 N.J. 47 (1994) (after an attorney concealed a judge's docket entry dismissing his client's divorce complaint, he obtained a divorce judgment from another judge without disclosing that the first judge had denied the request; the attorney then denied his conduct to a third judge, only to admit to this judge one week later that he had lied because he was scared; the attorney was suspended for six months); In re Cillo, 155 N.J. 599 (1998) (one-year suspension for attorney who, after misrepresenting to a judge that a case had been settled and that no other attorney would be appearing for a conference, obtained a

judge's signature on an order dismissing the action and disbursing all escrow funds to his client; the attorney knew that at least one other lawyer would be appearing at the conference and that a trust agreement required that at least $500,000 of the escrow funds remain in reserve); and In re Kornreich, 149 N.J. 346 (1997) (three-year suspension for attorney who had been involved in an automobile accident and then misrepresented to the police, to her lawyer, and to a municipal court judge that her babysitter had been operating her vehicle; the attorney also presented false evidence in an attempt to falsely accuse the babysitter of her own wrongdoing).

A reprimand is usually imposed when an attorney practices law while ineligible and is aware of the ineligibility, as here. See, e.g., In re Jay, 210 N.J. 214 (2012) (attorney was aware of ineligibility and practiced law nevertheless; prior three-month suspension for possession of cocaine and marijuana); and In re (Queen) Payton, 207 N.J. 31 (2011) (attorney who practiced law while ineligible was aware of her ineligibility and had received an admonition for the same violation).

The failure to promptly turn over funds will generally result in an admonition, even if accompanied by other non-serious infractions. See, e.g., In the Matter of David J. Percely, DRB 08-008 (June 9, 2008) (admonition for attorney who

for three years did not remit to the client the balance of settlement funds to which the client was entitled, lacked diligence in the client's representation, failed to cooperate with the investigation of the grievance, and wrote a trust account check to "cash;" significant mitigation presented, including the attorney's unblemished twenty years at the bar); In the Matter of Anthony Giampapa, DRB 07-178 (November 15, 2007) (admonition for attorney who did not promptly disburse to a client the balance of a loan that was refinanced; in addition, he did not adequately communicate with the client and did not promptly return the client's file); In the Matter of Douglas F. Ortelere, DRB 03-377 (February 11, 2004) (attorney admonished for failure to promptly deliver balance of settlement proceeds to client after her medical bills were paid); and In the Matter of E. Steven Lustig, DRB 02-053 (April 19, 2002) (admonition imposed upon attorney who, for three-and-a-half years, held in his trust account $4800 earmarked for the payment of a client's outstanding hospital bill).

A misrepresentation to a third person generally results in a reprimand. See, e.g., In re Lowenstein, 190 N.J. 59 (2007) (reprimand for attorney who failed to notify an insurance company of the existence of a lien that had to be satisfied out

of the settlement proceeds; the attorney's intent was to avoid the satisfaction of the lien).

Finally, the discipline imposed in matters where attorneys are guilty of failure to cooperate with ethics authorities, without more, is an admonition. See, e.g., 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 she finally retained 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 investigation of the grievance and did not communicate with the client); In the Matter of Marvin Blakely, DRB 10-325 (January 28, 2011) (after his ex-wife filed a grievance against him, attorney ignored numerous letters from the district ethics committee seeking information about the matter; the attorney's lack of cooperation forced ethics authorities to obtain information from other sources, including the probation department, the ex-wife's former lawyer, and the attorney's mortgage company); In re Ventura, 183 N.J. 226 (2005) (attorney did not comply with ethics investigator's repeated requests for a reply to the grievance; default case); and In the Matter of Kevin R. Shannon, DRB 04-152 (June 22, 2004) (attorney

did not promptly reply to the district ethics committee's investigator's requests for information about the grievance).

As indicated earlier, respondent has a history of failure to cooperate with an OAE investigation and this is his third default. In this matter, too, he failed to cooperate with the OAE by not appearing at three scheduled audits.

Recently, an attorney received a one-year suspension for violations similar to this respondent's. In In re Davidson, 212 N.J. 289 (2012), the attorney was found guilty of practicing law while ineligible (making two court appearances while on the IOLTA Fund's list of ineligible attorneys; there was no proof that he was aware of his ineligibility), failing to cooperate with disciplinary authorities, and failing to promptly turn over funds to his secretary for almost five and one-half years (the secretary's settlement funds that he had been holding based on his alleged claim against her).

Davidson's disciplinary history, however, is significantly more serious than respondent's. Davidson had a prior reprimand, a three-month suspension, and two-six month suspensions. In turn, respondent has been censured twice. For this significant distinction, we believe that he should not be disciplined as severely as Davidson, who was suspended for one year. We,

therefore, determine that a six-month suspension is appropriate discipline in this case.

We further recommend to the Court that respondent not be permitted to apply for reinstatement until he has fully cooperated with the OAE.

Members Gallipoli and Wissinger voted to impose a one-year suspension. Vice-Chair Frost and Member 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
Louis Pashman, Chair

By:_____
Julianne K. DeCore
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Neil L. Gross
Docket No. DRB 12-375

Decided: April 12, 2013

Disposition: Six-month suspension

Members	Disbar	One-year Suspension	Six-month Suspension	Dismiss	Disqualified	Did not participate
Pashman			X			
Frost						X
Baugh						X
Clark			X			
Doremus			X			
Gallipoli		X				
Wissinger		X				
Yamner			X			
Zmirich			X			
Total:		2	5			2

Julianne K. DeCore
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Chief Counsel